REFLECTIONS

Upon Two BOOKS,

The One Entituled,

The Caſe of Allegiance

TO A

KING in POSSESSION:

The Other,

AN ANSWER

TO

Dr. SHERLOCK's Caſe of Allegiance to Sovereign Powers,

IN

Defence of the CASE of ALLEGIANCE to a King in Poſſeſſion,

On thoſe Parts eſpecially wherein the Author endeavours to ſhew his Opinion to be agreeable to the Laws of this LAND.

By Wm Sherlock, D.D.

In a Letter to a Friend.

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REFLECTIONS
ON
The CASE of ALLEGIANCE to a King in Poſſeſſion, *and* The Defence of it.

SIR,

IF I could be uneaſy under any of your Commands, this, you may be aſſured, would be the time of my ſhewing it: It is an hard task you have laid upon me; The Books, of which you require my thoughts, are long: and ſpeak the Author (whoever he is) to be a Man of great Learning and Reaſon; one, who can argue to the beſt advantage his Subject will bear. And the Collections he has made, plainly ſhew, that he has taken great pains, and bent all his thoughts for ſome time, to the maintenance of that Cauſe, to which ſome *Prejudice* has unhappily determined him. I, Sir, to your knowledg never ſaw the Books till within theſe very few days, and I fear you will have too much reaſon from what I write to believe me, when I tell you, That the reading the Books once over, (and that with frequent Interruptions too) waſted almoſt half the time I have been able to allow my thoughts upon the Subject. This has prevented my conſulting any Books writ-

ten in favour of Submission to a King in Possession, nay, of reading Dr. *Sherlock*'s Book, which the *Defence* pretends to Answer. You must not therefore be suprized, if you happen to meet here with what others have said on the same Subject, without any acknowledgment that I received it from them; or (which I more fear) if you should find Opinions differing from those of very great Men, who have undertaken this Controversy. They were *my Thoughts*, Sir, which you required, and I have taken a course to give *them* to you free, neither biassed, nor over-ruled by the Opinions or Authority of others.

The Question, as 'tis stated by the Author of *the Case*, is put very *cautiously* and strongly in favour of the Cause he proposes to himself to maintain; he has fenced it in with such Restrictions in the stating, and the Exposition of the Terms, that it would be a very unnecessary thing to undertake an Answer to him, if his Book did not offer at the proof of more than the first Question under his Limitations, does require from him.

No one, I suppose, who has submitted to Their Majesties Government, who thinks it too the *Duty* of all *English* Men to do the same, and to pay Faith and Allegiance to them, will therefore believe himself at all concerned to maintain that, *If a Person who has no manner of Right, by force, exclude, or depose a King, whose Right to the Crown is clear and undoubted, and thereby gets the Exercise of the Government into his hands, the Regal Authority, and undoubted Right remaining still in the excluded Prince, the People ought to pay a full and entire Submission and Obedience to this King in Possession, so as never to attempt any thing against him, but stand by and defend him against the dispossessed Prince, with his Life and Fortune.* This is a Case of our Author's own making, and bears no Resemblance

to

to the preſent State of this Nation: Nay, on the contrary, if I may take the liberty to reduce the general Queſtion to our particular Caſe, I think the two things agreed by him, as Preliminaries, will ſufficiently juſtify any *Engliſh* Man in his ſwearing Allegiance, and paying the Duty of a Subject to Their preſent Majeſties. For the firſt of them agrees, *That a bare Poſſeſſion, tho purely by Uſurpation, will carry a Right to the Subjects Allegiance in an Hereditary Monarchy, where the whole Royal Line is extinct; to prevent the Bloodſhed and Confuſion which might follow upon the Peoples attempting to ſet up another Perſon or Government.* This prudential Reaſon, and a Submiſſion upon it, he lays down to be a ſufficient Title to the Uſurper, and that it makes him *from thenceforth King de Jure*, one to whom all Faith and Allegiance becomes due. ('Tis ſo obvious of it ſelf, that I might ſpare the obſerving, That he frames his Caſe upon a Suppoſition of the whole Royal Lines being extinct, for no other purpoſe than to reſtrain it ſo, as to extend only to Caſes where there is no other Perſon in being, who has a juſt Title to the Crown, and whoſe Right is invaded by that Poſſeſſion). *Caſe*, f. 2.

The ſecond agrees, *That where there are divers pretenders, and it is not* clear *who has the true Right or Title; the Subjects Allegiance is to follow the Poſſeſſion.*

If therefore the late King, *by* the aſſuming to himſelf an Authority to ſuſpend, and by general and unlimited Diſpenſations to repeal Laws without Parliament; *by* the entruſting almoſt the whole Power, Military and Civil, in the hands of ſuch Perſons only as would undertake with their endeavours to ſupport him in thoſe Exceſſes; *By* the putting thoſe few Laws which he found it his intereſt to obſerve, in Execution, by ſuch generally, as were by Law made incapable of all Truſt and Rule; *By* the conſtant

aim and tendency that every one of his Actions had to enslave us at home, not to omit the Bonds prepared for us, by his immoveable Adherence to the Interests of the *French* King, from which (as a chargeable Experience teaches us) the utmost effort we can make, and that assisted with very great and powerful Alliances, will scarce rescue us. *If* his unwearied endeavours to destroy the Reformed Religion, with a thousand other Male-Administrations, that struck at the very Being and Foundation of the Constitution it self, and the Laws and Liberties of *the People of England*; did declare, that he would not govern by our Laws or Act by an Authority limited by them. *If* upon the Parliaments humble and modest Representation to him (according to their Duty) of the unwarrantableness of such Proceedings, and the Alarm that the People took at his great Violations of their Rights, and Breaches upon the Government, he broke them up in Anger, and thereby shewed an obstinate and setled Resolution to assert that unlimited Power to himself, and govern according to it. *If* having by these Arbitrary Proceedings drawn great Difficulties upon himself, instead of taking proper Courses to secure his People against such Excesses for the future, he held to the same Counsels still, and by their Advice quitted the Kingdom, then in the utmost Confusion, without making any Provision for the Administration of the Government, and *voluntarily* put himself into the hands of its avowed perpetual Enemy. *If* all these things put together, will amount, either to a renouncing and disclaiming his Title to a Government limited by Laws, or a disabling and rendring him incapable to Exercise any Government at all. Nay, *If* the share and interest which the Body of the People have in the Preservation of the Laws and Constitution, and their concern in the welfare of the whole,

will

will make it come up but to a doubtful Caſe. *If* upon this, to reſcue us from thoſe Confuſions, to preſerve what remained of the Ancient Government, and to reſtore what had been impaired, the Repreſentatives of the People did fill the deſerted Throne by proclaiming the Authors of our Deliverance, King and Queen, and the Body of the People (for the number of Male-contents is ſo inconſiderable, that there is no need of ſoftning the word upon their account) have owned their Title to the Crown, ſubmitted and ſworn Allegiance to them as their Governors: And *if* it be viſible to the whole World, that their Government has produced all the good Effects that were propoſed or aimed at, and they are in as full and quiet Poſſeſſion of the Throne, as ever any Princes were who ſat upon it, with a repeated Recognition of their Title. I cannot but think, that every one, who will give himſelf leave calmly to conſider, muſt agree, That our Caſe comes up to that which our Author puts. It does not, cannot appear that any other Perſon has a better Right to the Crown: and the conſequence of our Author's drawing from that, will be, That every *Engliſh*-man ought to bear Faith, and pay Allegiance to Their Majeſties, who (thanks be to God) are in ſo full a Poſſeſſion of the Throne.

But not to enter farther into the general Queſtion, which, I think, ought not to be too freely ſearcht into, leſt it give Advantage and Encouragement to a ſort of People, who will be forward out of Wantonneſs, to put things in practice, which nothing but the utmoſt neceſſity can juſtifie; I conceive I ſhall effectually anſwer all that can be materially objected from *the Caſe of Allegiance*, &c. and *the Defence of it*, againſt our preſent Settlement, if I can maintain this Propoſition,

That

That *where a King is in the full and quiet possession of the Throne, and Exercise of the Government; has been solemnly proclaimed, and freely and voluntarily recognized and submitted unto by the States of the Kingdom as their King; has visibly the Power and Strength of the Nation in his hands; the Laws have their due course in his Name, and all publick justice is administred by those deputed and commissionated by him; altho he had no precedent legal Right, and that there is another person living, who according to the ordinary course of Hereditary Succession, has a just claim to the Crown; yet the Laws of* England *do require every private subject to pay their Allegiance to such a King in possession, and protect them in their so doing.* And this, I hope, will be fully made out, by plain Law, and all the seeming Objections offered against it from the Laws of the Land, answered.

To save my self and the Reader some trouble hereafter, it will be convenient, before I enter into the particular consideration of our Author's Arguments and Objections, to observe, That the Government of *England* is to be considered in two respects: 1*st*, With regard to the Power of Legislature, *viz.* The King and Body of the States, who have power over all positive Laws, to make new ones according as they in their Judgments shall think expedient, and to alter, amend, and supply the defects of the old ones, as they in prudence shall judg the present circumstances of Affairs require. 2*ly*, The Executive Power, of which the King is supreme, and Courts of Justice, and other Officers subordinate under him. To them it belongs not to deliberate or determine, what in their opinions it were fit or reasonable the Law should be, and thereupon declare that to be Law; but to declare what the Law is, as it at present stands, in every case coming judicially before them, and to put that

Law

Law in Execution. This is ſo very obvious, that it muſt without heſitation be agreed to me; and ſo muſt the conſequence that I draw from it: That I need not make it any part of the preſent Queſtion, Whether the Acts of one who is called an Uſurper in Title, that tend immediately to the deſtruction of the right of the diſpoſſeſſed Prince, be juſt in themſelves, ſo that they ought to continue in force, and not be repealed and annulled, by a Power competent for that purpoſe, upon the injured Prince's happening to be reſtored to his Right: But whether ſuch Acts being done according to the known legal Forms and Ceremonies, by ſuch a Poſſeſſor of the Throne as I have before deſcribed, every private ſubject may not, in good Conſcience, ſubmit unto and obey them, without taking upon him to judge of his Governour's Title? Nay further, whether the Laws of the Land do not protect him in ſo doing; and not only ſo, but require it from him?

I think the Affirmative is agreeable to the Laws: And I now come to conſider what our Author ſays to the contrary.

The firſt Point he endeavours to make out, is, That notwithſtanding the Opinions of the Eminent Lawyers whom he mentions (which I muſt obſerve were delivered in the times of Kings, whoſe Titles to the Crown were undoubted, ſo that there was no neceſſity for their ſtraining the ſenſe of the Law to make it favour their Maſter's intereſt: and which, for ought that ever yet has appeared, were never contradicted hitherto by any one of that profeſſion), *A King de facto is not Seignior le Roy within the Statute of* 25 E. 3.

I ſhall through this Diſcourſe take thoſe words to mean, one who is in the full and peaceable poſſeſſion of the Throne, and Exerciſe of the Government, with the

the free submission of the People, by their Representatives assembled in a Parliamentary way; but wants a Title by proximity of Blood and Hereditary Succession; and undertake for the defence of the duty of Allegiance to such an one only, and not to any possession without a true Right, short of that: If any of the proofs which I shall make use of hereafter, shall carry it further, they will more strongly prove this: But I will not answer for more.

I observe in general upon this Statute, 1. That the punishment prescribed by it, for the offences now under debate, is the utmost to which a temporal Law can reach, *Death and Disgrace*: This will make it highly reasonable, that the offence should be plain and certain. And in the second place, That this Statute was made in favour of the Subject, that he might be at a certainty what hazards he runs, and not be swallowed up in the Gulf, before he apprehended himself to be beyond his Banks: It made no new offence, but was restrictive of the liberty that Judges had taken before, of expounding every thing, that an angry or jealous Prince did resent as a wound of his Majesty, into High Treason. This is so well known to all that have lookt into the Law, that it were idle to quote Authorities for it. I will, add in the third place, as a thing not improper to be observed, That it would be a very hard thing before *E.* 3's time to prove a certain Hereditary Succession. The best Historian will find but few Instances of that kind from the Conquest till the time of the making of this Statute. So that the defect of Hereditary Title, could not be a thing forgotten, or slipt over, as out of the minds of King or People: Yet I can't perceive any thing in this Statute, to lead to such a distinction as is now made; tho it was made as a Rule for the Subject, from which he might learn, how

he

he might demean himſelf in thoſe great matters with ſafety. There is not ſo much as an Hint, that the trying who has the juſt Right and Title to the Crown, whether He, who is owned by the States of the Kingdom, and has the full Government and adminiſtration of all Affairs; or another, who a thoughtful buſie man (that can't content himſelf in the private ſtation wherein God Almighty has placed him, but muſt *make himſelf* a Judge of the higheſt matters) will be fancying ought to be there. I ſay, That the trying that Point, ſhould be left to a Jury of 12 men; as it muſt be, ſhould a private perſon be proceeded againſt for an attempt upon the Poſſeſſor, in order to the reſtoring the diſpoſſeſſed Prince; If it be true, that it is not Treaſon by that Law, for a private Subject to attempt any thing againſt the King in poſſeſſion, in behalf of him, that of Right, by Hereditary Succeſſion, ought to be King.

This would be an hard Interpretation of a Statute, made in the time of a King who obtained poſſeſſion of the Kingdom by a War levied againſt his Father, and a forced Reſignation, after the Arms, of thoſe who took part with him, were ſucceſsful: In which taking up Arms againſt the King in poſſeſſion, notwithſtanding all that might juſtifie it in Reaſon of State and Prudence, he was ſenſible that the Laws of the Land would not bear his friends out; and therefore thought fit, in the firſt year of his Reign, to have an Act of Parliament paſſed, to indemnifie them againſt ordinary legal proceedings; for what they had done. This he lookt upon as neceſſary, tho at the ſame time, he thought the Cauſe in which thoſe who fell in the War, died, ſo juſt in it ſelf, that he made a new Law on purpoſe, to ſave them from ſuffering in their Eſtates: For we find, in the ſame year, there was a Statute made, to entitle the Executors of thoſe, who

were Slain in his Quarrel, in the pursuit against his Father, to Actions to recover their Testators Goods.

Lawyers account *Co-temporaneam Expositionem*, the best interpreter of the Sense of Statute-laws. I would fain have the Auther, or any one else, who would confine the words *Seignior le Roy* in that Statute, to, *Lawful and Rightful King by Hereditary Succession only*, to shew any thing leading to that Interpretation in the History of that time, or any of the Kings Reigns before that. Where it was ever heard of before that Act, that Allegiance was due to the uncrowned, unsubmitted-unto Right Heir? Nay, I will go farther, Where in any publick Record, before that Statute, there does appear a damning of the Title of such a King, after a Submission of the People to him, in favour of him that was nearer in Blood? Whether the several Predecessors of *E.* 3. who had not a legal Title by Hereditary Succession, are not called Kings, in the Statutes of almost every year of his Reign, and all their Acts unquestioned? If there were nothing extant to direct the Subjects to the contrary, and the King himself so often told them, that those, whom *I* must call Kings *de Facto* only, were Kings without any addition (the very letter of this Statute) it would instead of being an Ease and Relief to the People, have proved according to the present Interpretation, the greatest Snare that was possible.

'Twas easy for them to see and know who exercised the Kingly Office, under whose Administration they had the benefit of the Laws, and by whose Authority all Judicial Proceedings took their Course. They might too, without any great difficulty, learn who were the visible Attendants on the Throne, the King's

King's near Relations, his Wife, Son, and Daughter. The Throne is but one, and they ſaw who poſſeſſed that. The name *King*, is a name of Office, which conſiſts in Exerciſe, that too was as plain to them. The words of the Statute ſeem as plain, *'Tis Treaſon to compaſs or imagine the Death*, &c. *of the King:* Would it not now be a very great hardſhip to put it upon a private Perſon, to ſeek an hidden Senſe in plain Words, and at the peril of his Life and Family, to make himſelf judge of all the Difficulties which may ariſe upon our Conſtitution, (which, what it is in all points, never was or will be agreed upon)? Whether this Perſon that is ſo expreſly within the words of the Statute, may not hereafter appear to have been wrongfully poſſeſſed: And upon that apprehenſion, to put the poor Man under an Obligation of laying himſelf, for the ſake of a Nation, open to the Vengeance of one, who has the plain words of the Law on his ſide, and Power to back it? To put him under a neceſſity of being a Sacrifice to his own private Opinion, againſt the publick acknowledgement of the Body of the People, in a caſe wherein common Senſe, and the Wiſdom of all Governments forbid the admitting a private Perſon to be a Judge; nay, won't endure its being made the Subject of a nice and curious Inquiry?

But I perceive by *Defence* f. 6, 7. That it is one main ground of our Author's Opinion, and whereon he principally relies, That the Law does not look upon the King *de Facto* to be *King*, but accounts him that is diſpoſſeſſed, and *de Jure* ought to be ſo, to be ſo; and he calls upon Dr. *Sherlock* for Authorities to prove the contrary. This explains the two firſt Lines of his Book, where he makes it the deſcription of a King *de Jure*, That he is *the Perſon that has the Regal Authority*. The Doctor

had asserted, That the King *de Facto* was King, as a self-evident Proposition; and I should think my self very safe in my Proposition still, were I in the Doctor's case, without any other proof. But *I* will for once comply with the Author's Request, and refer him to a very ingenious Book, called, *The Case of Allegiance to a King in Possession*, where he may find a great many unanswerable Authorities to that purpose; e'en as many as ever there were Revocations, or Repeals of the Acts of such Kings. There they declare, That the *Usurper* was in fact King, but not in right; and after they have done so, unless there can be two Kings, they have left no other sense for the words, *King de Jure*, but that of right he ought to have been King all that time, tho the other in fact was so. For his full satisfaction, I will give him a taste of one, out of many, and it shall be his *Darling* Act, the Statute 1 *E.* 4. which may be seen printed in the Record of *Baggot*'s Case, in the Year-book, 9 *E.* 4, 9, 10. The Author quotes it often, and once as an Authority for him in this point, because (speaking Historically, and describing Persons according to the series of times, that it speaks of them in) it calls *H.* 4. *Henry* late Earl of *Darby*, as he was, when he *reared the War against* R. 2. which is the thing that follows that Name: But let us see what other ill things it says of him, Why, *He usurped and intruded upon the Royal Power, Estate, Dignity, Preheminence, Possession, and Lordship of* England. And after he had done so, and King *Rich.* 2. was dead, it is true, *By Law, Custom, and Conscience, the Right and Title of the said Crown and Lordship, descended to the Earl of* March. But then (as if it were afraid the sense of the words, *Right and Title*, should be mistaken) it sets them in the next Sentence, in a direct Opposition to the

the Poſſeſſion of the Throne in the Senſe I contend for; where it ſays, That *E.* 4. *according to the Right and Title of the ſaid Crown and Lordſhip, after the deceaſe of the Duke of* York *his Father, took upon him to uſe his Right and Title to the ſaid Realm, and enter'd into the Exerciſe of the Royal Eſtate, Dignity, Preheminence, and Power of the ſame Crown, and to the Reign and Governance of the ſaid Realm of* England, *and Lordſhip. And amoved* H. 6. *from the Occupation, Uſurpation, Intruſion, Reign, and Governance of the ſaid Realm, to the great Joy of the Subject for their being departed from the Obeyſance and Governance of the unrighteous Uſurper*, &c. If this be not enough, take the words more plainly, where the Statute tells us, *The Crown after the death of* Rich. 2. ſhould *have deſcended to the Earl of* March, *as next Heir of the Blood, if the ſaid Uſurpation had not been committed.* The effect of theſe words is again repeated with regard to *E.* the 4*th*'s Title. And the Statute expreſly diſtinguiſhes, *That the King was in right from the death of his Father, very juſt King of the ſame Realm, but only from the fourth day of* March, *in lawful Poſſeſſion of the ſame Realm, with the Royal Power, Preheminence, Eſtate, and Dignity belonging to the Crown thereof*; with abundance more to the ſame purpoſe. Theſe Authorities, without remarking on them, will probably go a great way in proof of the Doctor's Propoſition; and the rather, becauſe they are of times when *de Jure* was triumphant; if they don't ſatisfy, upon a little Intimation, more ſhall be given.

I confeſs, I can ſcarce with Patience hear ſome Opinions that are fondly broached upon ſo weak a Foundation as a private Judgment; ſo very dangerous to all Governments, and deſtructive to the Perſons themſelves who advance them. If the Conſtitution of the

Kingdom

Kingdom were plain and positive, so that it were impossible for any unbiassed, considering Man, to think otherwise, but that our Monarchy is so *unalterably* Hereditary, that neither the Consent, or other Act, nor any manifest impediment or defect of the Person, who is next in Blood, could according to our Constitution, devest him of his Right to the Crown, or discharge the Subject from Obedience to him; Then, indeed, a private Man, whose certain knowledg of the Royal Pedegree convinced him where the undoubted Right was, might reasonably think himself bound in Justice and Conscience to pursue that Title with his Services, however Unsuccessful, Violence, and Injustice might for some time render the Undertaking. But since it must be agreed, That the Hereditary Right to the Crown by our Constitution, was never lookt upon to be so sacred and inviolable, but that the next in Course may have such a known unfitness and incapacity upon him, of answering any of the ends of Government, that he may, without any Violation of that Constitution, be laid aside: (As suppose him, to instance in one that all Mankind agree in, a perfect Ideot from his Nativity) And that one, who was once possessed of the Crown, may devest himself of his Right of Government, by a voluntary Quitting, or Resignation of it; which may be done without making the whole Nation witnesses to it. So that it must be allowed, that there may be instances wherein proximity of Blood in the right Line, will not be an infallible Badge of a Right to govern; and there may be great doubts who has the best Title. And since in the Case of an absolute Incapacity to Rule, and in differences and competition between Titles, there must be some Judge. And since *Reason* and *Usage* say, That things of that nature, ought not to be of any private

vate Determination, but are proper for the Deciſion of thoſe who repreſent the whole Body of the People only, the whole being concerned in it; I can't tell whether Pity, or an hard Name will beſt ſuit that particular Member of the Body, who will not acquieſce in the Deciſion which the States of the Kingdom (his own Repreſentatives amongſt the reſt) make of ſuch a Caſe; but muſt be ſetting up particular Notions of his own, and taking a great deal of Pains to warp, and with violence ſtrain the plain words of a Law to his own undoing. If thoſe who argue ſo warmly againſt themſelves, and every private Subject of *England* in this matter, would but conſider what is ſaid before, that the 25 *E.* 3. was made in favour of the Subject, to ſhew him his danger before he fell into it, and that it was not at all the end of that Law, to ſettle the Right of the Crown, (which our Author agrees is done by the Fundamental Conſtitution, and not any poſitive written Law) but only to ſecure the Peace and Quiet of the Kingdom from the attempts of private Perſons againſt their Governors, That the deſcription the Law generally gives of Treaſon, is, that 'tis *Crimen Læſæ Majeſtatis*, which ſeems to refer principally to the Office, and the Perſon as inveſtd with that, not to a diſpoſſeſſed, tho rightful Heir, who is forced into a private Condition, and has little of that Majeſty to be guarded: And that in *Glanvill*'s time, the Peace and Settlement of the Kingdom was ſo much conſidered, that it was called Treaſon, *Machinari Seditionem Regni*, as well as *Mortem Regis*; They would ſurely confine their thoughts to their Cloſets, till they could ſhew a little better Agreement between them, and what has been the received Opinion in all Ages, ſince the making of the Statute; or till they can write enough to ſatisfy a prudent Man, that it were to be wiſhed it were otherwiſe.

wise. The doing which, I presume, will take some time; since I could never yet meet with *One*, till I saw the contrary in Print, who did not think it so reasonable in it self, and so much the common concern of Mankind to maintain it; that 'twas their Sense, words ought to be strained (if there were need of it) to support, not to destroy the Proposition I am endeavouring to maintain.

The Author allows some of those particular Treasons recited in the Act, *As the Clipping the Usurper's Coin, Counterfeiting his Seal, nay, Levying War against him upon any account, but in behalf of the dispossessed Prince; may by the Law* (that is by this Law, for there is none other for it) *be punished as Treason.* He is very cautious indeed in his wording of it; *These may be Treason under an Usurper*, and punished as Treason *under* an Usurper: And will not confess in express words, That these are Treasons *against* him, but that they are rather *against the course of the Government, and the Authority of the Lawful King through him.* The notion is fine, but 'tis of very late date; the Indictments upon which those Persons are to be punished, speak nothing of it; they say, *'Tis against the Duty of their Allegiance to him, and against his Crown and Dignity.* And it will be hard to make the word *King* in one part of the Statute, signify only a certain Person, who ought of Right to be King, but is not so, and perhaps never may; when the same word, without any Explanation, stands in the next line for *another* Person possessed of the Throne by wrong, and in prejudice of the Man's right that was described by the self-same word just before.

Case, f. 4.

When the Author convincingly proves, That the next of the Royal Line in course of descent, has as inherent and inseperable a Right to the Allegiance of the Kingdom,

dom, as God Almighty has to the Worſhip and Service of his Creatures; and that *an Idol in Poſſeſſion*, as he words it, by virtue of its being ſet up in a Temple, is poſſeſſed of God's Power, and God Almighty deveſted of all Rule, (not to run the Parallel farther for fear of Blaſphemy) then I will grant he has offered a good Argument to prove that the word *King* in this Statute can *only* ſignify the *Right Heir*, by the ſame Reaſon that the word *God* in the third Commandment can mean none but the *True God*. The Being of God is in its Nature unchangeable, his Name, and Right to govern us incommunicable. The Office of a King, and the Right of particular Perſons to that Office, are of politick Inſtitution, and may be ſeparated. It may often vary, and ceaſe, either for a time, or abſolutely, according to the Laws of the Conſtitution. *Caſe*, f. 7. *Defen.* f. 4.

So if the Author will make the Prieſthood ſuch an Office, as, that a Man's exerciſing the Functions of it will make him really and in truth a Prieſt, without entring in at the door (which my Profeſſion does not lead me to the Interpretation of; but I ſuppoſe the Author muſt think, ſignifies ſome ſetting apart, by thoſe with whom Chriſt has left ſuch a Power) then his Text may bear ſome Reſemblance to an Intruder into an Office, of which all ſides agree Poſſeſſion may be taken by force, and that that Poſſeſſion does make him in fact (tho not in Right and Juſtice) a King. *Defen.* f. 4.

I could have wiſhed, that our Author had conſidered a little better, before he had made theſe and ſome other Compariſons. *Def.* f. 69.

Our Author will make me weary of putting him in mind what the end of the Statute 25 *E.* 3. was; if

he had weighed that well, he would have found, That notwithstanding what is offered by him, from the word *Heir*, against the Interpretation, my Lord *Coke* was not so much in the wrong, when he said, That *our Lord the King*, meant him that *is King:*

Case f. 7. *Def.* f. 8.

I have already said, That that Statute does not offer any thing towards the Determination of the Title to the Crown; who ought to be King, whether he that is in Possession, or another who pretends he has a just Claim to it, is not its business. There is, notwithstanding what our Author says to the contrary, another proper place for the deciding such a Controversy. But the Law declared by this Statute, secures the Throne against the Attempts of private Subjects, and binds them to a quiet Submission to the Office and Power, which is sacred, in whose hands soever it is. And therefore (taking our Monarchy to be an Hereditary one, as it undoubtedly is) I can see nothing *unreasonable*, much less *contradictious* in the affirming, That the Eldest Son of a King *de Facto*, that is, one owned and submitted unto by the People as their King, is Heir apparent to the Crown, and ought to be looked upon as such, by every private Subject, until the Rightful Owner regain the Possession, or obtain the Sentence of those, to whom the Right of determining it belongs, in his favour.

Possession, without any precedent Title, is a good Title against all the World, but him that has the true Right; so that, as between the Usurper and any private Person, the Usurper has a Right to the Throne, which is by the Constitution an Hereditary one. The Author himself will grant this, unless such

private

private perſon act in behalf of him, whom he ſuppoſes to have the very Right; but of that Right, I cannot by any means allow the private Subject a Judge.

I will readily agree, That this Statute did not intend any kindneſs to the Uſurper, or the eſtabliſhment of his Title; nay, that the principal aim and deſign of the Law (of which that Statute was declaratory) was to preſerve the Government, by ſecuring the Perſon of the King, (a Poſſeſſion and Right then going together) and taking care of the Succeſſion. And it has taken a much more effectual way to do it, then our Author's Interpretation, if that were admitted, would do. Let us turn our Author's Expoſition into expreſs words, and the Law will run thus, *It ſhall be High Treaſon to compaſs*, &c. *the Death of the Lawful and Rightful King*, &c. *But if there be one in Poſſeſſion of the Throne, who is not Lawful and Rightful King, then it ſhall be no fault for any particular Subject to compaſs*, &c. *his Death, in order to the inſtating him that has Right, in the Throne.* Would ever any King, be his Title never ſo undoubted, think himſelf advantaged or ſecured by ſuch a Proviſion, where, by expreſs words of a Law, liberty would be given to every particular Subject, to examine and paſs Sentence on his Right? Is it not a more reaſonable and prudent Proviſion, and more likely, even to prevent an Uſurpation in after-times, to guard by expreſs Law his Perſon, (who was at the time of the making the Law rightful Poſſeſſor) and that of him, who of Right ought to ſucceed him, and ſo downwards for ever under the higheſt Penalties. And (taking it for granted, that that Proviſion would keep the Right and Poſſeſſion together) to require the Obedience of every particular

Subject to the Poſſeſſor from time to time, without allowing the Rabble a liberty of examining into the Title.

So that it is very far from being an unreaſonable Expoſition of the Law, tho it ſhould happen to be a Protection to the Wife and Son of an Uſurper in Title, to ſay the Title of the Poſſeſſor of the Crown ſhall not be canvaſſed by every Subject, but the Dignity of the Office ſh ll ſet him above any particular perſons paſſing *Sentence* on, and exerciſing *Authority* over him.

In ſhort, The Common-Law, which made ſuch extraordinary Proviſion for the ſecurity of the Perſons of the King and his Relations, could not do it for any Sanctity of their Perſons, any otherwiſe, than as they were inveſted with the Kingly Office, and in relation to that. It ſecured them for their own ſakes, but more for the ſake of the Government, and to preſerve the Peace and Order of that. It ſuppoſed indeed, that no Perſon would obtain *it*, but he who had a Right, becauſe no other ought to do ſo; and all the Subjects are obliged under the greateſt ties to prevent it; But 'twas as far from the Intention of the Law, as it is from Senſe and Reaſon, to leave it at the liberty, nay, make it the duty of every particular perſon to raiſe Diſturbances, and throw an whole Kingdom into Confuſion; becauſe he, againſt the Recognition and Senſe of the Body of the People, thinks another's Title to the Crown better than his who wears it. So, (to carry this on) as againſt the People who have no Right at all to the Crown, for the preſerving and continuing the Hereditary Monarchy, it provided for and ſecured the Son of the King in Poſſeſſion, as the Perſon who according to our Conſtitution, has preſumptively a Right to ſucceed his Father

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in the Throne, till there be ſome Authoritative Declaration againſt his Father's Title. I confeſs, *Heir Apparent to a King* de facto, *who has no Title to the Crown, but his own Poſſeſſion*, as the Author has tacked the words together, does ſeem odd; but the difficulty is in the words only, not in the thing. The name King is never clogged with theſe words *de Facto*, till he is out of Poſſeſſion: The private Subject muſt look upon him as his King, and conſequently on his Son, as the Heir of his King, and ſo not attempt any thing againſt them, which is what the Laws againſt Treaſon provide for. The *de Facto*, which is all that imports any inconſiſtency or Contradiction, does not then belong to him. *Def.* f. 9.

But we are told, *That the conſtant Practice and Cuſtom of the Realm, is ſo far from warranting my Lord* Coke's *Gloſs, that it proves the contrary. For that the Parliaments upon every Revolution, uſed to Attaint the Adherents to thoſe who oppoſed them, tho acting under a King in Poſſeſſion; nay, dealt with the Poſſeſſor himſelf as a Traytor, ſcarce allowed him the Name of a King, or lookt upon his Acts of Government as Valid and Authoritative in themſelves.* *Caſe* f. 9. *Def.* f. 13.

I lay all theſe together, becauſe the ſame Anſwer will in a great meaſure ſerve for all of them, tho each may have its particular conſideration.

None of thoſe Proceedings amount to ſo much as a colourable Proof, That to act againſt one, who in Juſtice, and according to our Conſtitution ought to be King, but is out of Poſſeſſion; in Obedience unto, and Defence of the King who is publickly ſubmitted unto by the Body of the Kingdom, and in Poſſeſſion of the Government, is by any Law, at preſent a Law of the Land, Criminal. All thoſe Attainders were by Parliaments, whoſe Power is not to be contradicted, or the Reaſons of their

Proceedings

Proceedings disputed: It was, without doubt, by all moderate men at that time lookt upon as very hard, and contrary to Equity, to punish men by positive Laws, *ex post facto*, for what was no breach of any of the publick Laws, or Acts of State then in being. These Laws were undoubtedly *iniquæ*, unequitable, but I believe no one would have put the Author to the trouble of *proving them to be Laws*.

Def. f. 15.

The People either of themselves to make Court to the Power then uppermost, or being over-awed by the Interest and Recommendation of those about the King, did generally elect and return the Friends and Adherents of the prevailing Party, whose Wounds being fresh, and their Losses quick and piercing, they kept themselves within no bounds of Justice or Moderation: They were resolved to gratify their private Resentments, and revenge themselves for Injuries done them or their Friends upon any terms; so that they took not either the Laws of the Land, or the common Rules of Justice, for their guide, but made both truckle to their Passions. The King was glad to lessen the number of his Enemies, the cutting off many of whom, and frightning the rest into Submission by such Examples of his Severity, he lookt upon as the only means to secure himself against another turn. That this was the Case, is certain, and I wish we could find instances in our Ancient Histories *only*, in the times of our *Edward*'s and *Henry*'s, to prove, that where there are two contesting Parties in a Kingdom, neither of them will make use of the advantages they happen to obtain over the other, with such a temper as right Reason and Prudence would direct. But the violence of such Proceedings must not be offered as any proof or measure of Right; nay, they are unfit to be mentioned, or made use of in any cool debate, unless it be to create in the minds

minds of Men, an abhorrence of ſuch Actings, and by ſetting forth the calamitous Conſequences that were produced by the puniſhing the poor Subject, upon the various Succeſſes on each ſide, to recommend that wiſe and equal Law, which not only declared, That the Subject ought to be indemnified in his paying his Service to the King for the time being, for that it was his *Duty* to do ſo; but provided, That all Statutes made afterwards to the contrary, ſhould be void. This latter part was all of the Statute which was new, the reſidue was always Law, and is there only authoritatively declared to be ſo. And that part of it that was new, can't have its full effect to reſtrain ſubſequent Parliaments, to which no poſitive Laws can give bounds. But yet their aiming at ſuch a Reſtraint, is a ſufficient Caution to future Parliaments, to conſider very well before they make any Law contrary to it; which is thereby adjudged a thing utterly unfit to be done, and that in the moſt ſolemn manner, by as wiſe a Prince as ever filled the Throne; and a People, whoſe Sufferings under the miſchiefs of a contrary Practice had convinced them, not only of the reaſonableneſs, but the abſolute neceſſity of the thing. 11 *H.* 7.

I think, I need not ſay any thing farther as to the Inſtances out of Hiſtory, during the Wars between *York* and *Lancaſter*: If there were need, the Author has done it to my hand, *Caſe* f. 11. and elſewhere; at leaſt, as to any Argument of Right or Juſtice that can be drawn from the Vengeance they dealt to each other upon any Advantages. *E.* 4. attainted *H.* 6. and all his Adherents, being an Uſurper upon his Rights, and gave very hard words to him, as well as to his Grand-father *H.* 4. the firſt Invader of the Right of the Houſe of *York*; and *H.* 6. his being actually a King in Poſſeſſion was not a Protection againſt it. Will it thence follow, that by the ſtanding

Law

Law of *England*, a King in Poſſeſſion not being rightful Heir to the Crown, and all thoſe that act under him, are Traytors and Rebels to the diſpoſſeſſed Prince? Will not *H.* 6th returning his Complement to the full, when he was reſtored to the Crown, as effectually prove the Law to be with him being in Poſſeſſion, tho *E.* 4. had the better Title. In truth, none of theſe Inſtances prove any thing, but that *de Facto* and *de Jure* were much alike eſteemed, when they got the Power into their hands; they made their Parliaments ſay, and do what they pleaſed, when either of them had ſufficient Power to put the Acts made againſt his Rival, and thoſe who adhered to him, in Execution.

I can't forbear obſerving, That in all theſe *violent* times, there is not ſo much as one Inſtance of any Perſon adjudged a Traytor for his ſerving the King in Poſſeſſion, upon an Indictment in the ordinary courſe of proceedings according to the eſtabliſht Laws. All thoſe Determinations proceeded from the Parliament, *ex plenitudine poteſtatis*. And 'tis plain, that they did not ſo much as pretend to ſquare their Actions to the Laws then in being, by the Inſtance he gives, where *H.* 6. is attainted of High Treaſon for the death of *Richard* D. of *York* at the Battel of *Wakefield*, when 'tis apparent, not only that the D. of *York* had by his own Agreement and Oath put himſelf into the condition of a Subject to *H.* 6. during his Life; but that the poor King was at the time of the fighting that Battel, in the Power of the D. of *York* himſelf, left by him in the Cuſtody of the D. of *Norfolk* and E. of *Warwick*.

Caſe f. 10.

Caſe f. 11. Not to mention that the Author agrees, the D. of *York* was not King, but only declared Heir to the Crown after *H.* 6th's death. And all agree, That the death of the Heir Collateral to the Crown, is not High Treaſon within 25 *E.* 3.

3 *Inſt.* 9.

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As to his particular inſtances of hard Names given by *Ed.* 4. to the *pretended Parliament* 49 *H.* 6. beſides what has been obſerved in general before, I will add only, that the Right and Juſtice of his Cauſe depended upon the Nullity of their Proceedings; and yet he durſt not inſiſt upon the Original Nullity of them, which (it may be ſuppoſed he knew) 'twas not the part of private Men or the Judges to determine: And therefore it was done by a Law; and that Law is an Act of Repeal only, *Reverſing*, *revoking*, and *making*, not *declaring* the former proceedings void. Caſe. *f.* 13.

Nor is there any thing in what we find *Caſe. f.* 14. that can amount to a Proof of his Poſition. In the end of that Page he grants that Acts of Parliament paſſed under an Uſurper are valid without any Confirmation: If he had not, we have a better Authority for it, That of the ſelf-ſame Parliament that gave the Determination in favour of the *D. of York*'s Title to the Crown: *That the Laws took no place againſt that.* And they that were ſo bold to do that, would not have been afraid to have carried it on further, if Law or Reaſon would have ſuffered them. Yet they, and the *D. of York* himſelf, ſolemnly declare, *That all the other Acts and Ordinances made in the Uſurper's Parliament, be good and ſufficient.* (Now if it be eſſential to every Act of Parliament, that the King's Approbation give it life, ſurely the Law muſt look upon thoſe Perſons to have been *Seigniors les Roys*, whoſe Laws are unqueſtionably allowed to be good.) Nay, it appears moſt plainly that the Statute of 1 *E.* 4. *c.* 1. for confirmation of Judicial proceedings, which our Author inſiſts on, was Cautionary only, and that from the Act it ſelf; for the Preamble ſays, 'twas made, *In eſchewing of Ambiguities, Doubts, and Diverſities of Opinions which may ariſe, enſue, and be taken*, &c. when he was ſetled in the Throne, and the Parliament and Judges (as 'twill be eaſily believed) were Caſe. *f.* 14. Def. *f.* 37.

ready to complement his Right to the highest pitch; they could not strain it higher, than to make it a *doubtful* case, whether the Acts of the preceding *Kings in Deed, not in Right*, were not valid. And the words used in the Statute are *Declare, Establish, and Enact, &c.* the first of which, we know, was never lookt upon as a proper word for introducing a new Law; or made use of upon such an occasion.

Case. f 11. Def. f. 32. But his third Argument deserves something a more particular consideration. *It is this: If Treason lay only against the King in Possession, whether King* de jure *or no, then the Subjects may not, under pain of High Treason, admit any Claim of the King* de jure *against him; for that were to be adherent to the Enemy of the King in possession.*

I confess I wonder that a Man of our Author's Learning and Reason should set down such a Consequence: But this was brought in, 'tis probable, to make way for the main Assertion of his Book, and the most material thing

Case. f. 65. in the whole Controversie, *That the Parliament cannot be, and that there is no Judicature provided to determine the Title to the Crown, where there is a Competition about it.*

Both these will receive one Answer. I should think (if there were no Precedent or Express Authority in the point) that it would be allowed a sufficient proof of the contrary, That Right Reason, and the very Nature of Government, do make some such power of determining absolutely necessary. For the Foundation of all Governments is supposed to be the good and benefit of those who form themselves into it; and in all cases whatsoever, unless there be an express provision to the contrary, what is agreeable to the Sense and Reason of Mankind, and necessary to the support and well-being of that Government, must be supposed to be the very first general ground agreed upon: so that in such cases, where there is not any thing positive against it, *Is* and *ought to be*, seem in reason

reaſon to be covertible terms. And 2*dly*, There cannot, as the frame of our Conſtitution is, any other be imagined, than the States of the Kingdom. This I am ſure will be agreed unto me, If there be any ſuch Judicature, it can be none but they: And allowing them to be ſo, common ſenſe will ſay, They being made Judges, muſt thereby *impliedly* have a Right to act in it, free from all precedent Obligations of Duty to either Party; They act as freely in that point, till the Determination is made, as their Anceſtors did, when they may be ſuppoſed to be met together, to agree upon a Form of Government; Only that they are to keep to the Rule, which they find ſetled and agreed on both ſides, *viz.* That our Government is an Hereditary Monarchy; And the Queſtion to be determined by them is, Which of the Pretenders has the beſt Title upon that Foundation. Is it not then an Affront put upon the judgment of a Reader, to ſay, That, becauſe it is maintained, that the poſitive Laws of the Land, for the Quiet and Preſervation of the Monarchy, forbid every private Subject, in his capacity of a Subject, to take upon him to cenſure the Title of a King poſſeſſed of the Throne, it will thence follow, That the States or Body of the Nation, when there is ſuch a ſtop in the proceedings, by ſome doubt upon the very Conſtitution it ſelf, that the whole is likely to fall, unleſs a deciſion be made of it; ſhall not have an equal Power to reſcue themſelves from that Confuſion, as their Anceſtors had to form themſelves into Order.

They do this upon the Reaſon of the Conſtitution it ſelf, and by a Power and Fundamental Right, which of neceſſity muſt be ſuppoſed to be reſerved, when they embodied themſelves into a Politick frame: they act in it upon their old Natural Liberty, which could never be ſubmitted to the Prince in this inſtance, becauſe the Queſtion ariſes only upon the doubt, who is the Prince.

And therefore the Duke of *York*, in his Answer to the Objection, that was made against his Claim to the Crown from the Oaths they had taken to *Hen.* 6. tells the Lords, *He lawfully may claim and pursue his right, and demand Justice in such form as he doth: And that all other persons, and namely the Peers and Lords of this Realm may, and by Law of God and Man ought, to help and assist him in Truth and Justice, notwithstanding those Oaths,* &c.

Def. f. 34. Our Author calls for a proof, of the Authority of the Parliament or States of the Kingdom, to determine the Rights of contesting Princes: As if there were a printed Instrument of the Fundamental Constitution extant, by which the Priviledges and Powers of each part of it are limited. 'Tis said before, that necessity of Government warrants this; and the same necessity warrants their convening in order to it, without the formality of a Summons. That Form and Method of proceeding supposes a King and Government setled, and is one of the Rules which direct the King how he shall administer that Government, and what are the Duties and Offices of particular persons under it: This is above all those Forms; a necessary Means to settle the Rule it self.

However, I am pretty confident that those conversant in our ancient Histories, and Parliamentary Records, will find reason, to carry the Power of the States of the Kingdom farther, rather than to deny their Authority in this point. The Claim of the D. of *York* 39 *H.* 6. is not the only instance of the thing; but it being a very solemn and notorious one, and a full proof of this point, I will lay it down a little more fully and in a piece, then it was for our Authors turn to do.

Richard Duke of *York* 39 *H.*6. comes to the Parliament, and *by his Counsel*, puts in his Claim in Writing, to the Crown; deriving his Pedigree very plainly, so as to entitle himself as next Heir by a Lineal Succession.

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The Pedigree could not be unknown, to any one of the Lords, before whom the claim was laid; yet King *H.* 6. having long enjoyed the Crown, the Lords ſay, *The matter was ſo high, and of ſuch weight, that it was not to any of the Subjects to enter into Communication thereof, without his high Commandment, Agreement and Conſent had thereunto.* They thereupon go to the King opening the Claim; He could not be put into a better condition then he was; and therefore, had he lookt upon this cautiouſneſs of the Lords to be more than Complement, he would never have conſented to their hearing it; but he does not offer to forbid their proceeding; tho 'tis certain he was ſenſible of the defects of his Title, and therefore earneſtly prays the Lords to examine ſtrictly, and raiſe all the Objections they could againſt the Duke's Title.

Then they read the Claim, and order the Judges to ſay what they could in maintenance of the King's Right. They excuſe themſelves, ſay, *It hath not been accuſtomed to call the Juſtices to Counſel in ſuch matters; the matter was too high, and toucht the King's High Eſtate and Regalie, which is above the Law, and paſſed their Learning; wherefore they durſt not enter into any Communication thereof, for it pertained to the Lords of the King's Blood and the apparage of this Land, to have Communication and meddle in ſuch matters.* But this was not the only reaſon the Judges gave for their ſilence; They ſay, *They were the King's Juſtices, and have to determine ſuch matters as come before them in the Law; between party and party they may not be of Counſel: And this matter was between the King and the ſaid Duke of* York *as two parties.*

The Judges Excuſe was allowed as proper, for, Counſel was not their Duty; 'twas not a matter to be adjudged by the expreſs Laws of the Land, of which they had the Expoſition and Execution; but by ſomething above the poſitive Laws; And, they were not a part of the Parliament, that

that Power of determining they had none. But the King's Attorney and other Counsel being required to do what had been required of the Judges, the like Excuse would not be admitted from them, *for they were the King's particular Counsellers, and therefore they had their Fees and Wages:* They return, *They were the King's Counsellers in the Law, in such things as were under his Authority, or by Commission; but this matter was above his authority, wherein they might not meddle:* Yet they are over-ruled, for 'twas their Duty to offer what they could in a Court of Judicature in defence of their Master's Title. Then *It was agreed by all the Lords, that every Lord should have his freedom to say what he could say, without any reporting or magre to be had for his trying.* And *after the saying of all the Lords, every after other,* Objections are framed against the Duke's claim. The Duke puts in Answers to them, and often prays that the matter might be determined. The Lords solemnly declare that the Duke's Title could not be *defeated,* but agree upon the Expedient which the Chancellor proposes, *desiring the Lords, that if any of them could find any other or better means, that it might be shewed; whereupon after sad and ripe Communication in this matter had, it was concluded and agreed by all the said Lords, that sith is was so, that the Title of the said Duke of* York *cannot be defeated, and in eschewing the great inconvenience that might ensue, to take the means above rehearsed* (viz. *That the King should keep the Crowns, and his Estate and Dignity Royal, during his life, and the said Duke, and his Heirs, to succeed him in the same.*) The Lords open this Expedient to the King, and both the Parties solemnly submit and agree to it.

From this proceeding 'tis very plain in the first place (which I toucht upon before) That if the Judges who made the Excuse, and Lords who admitted it, know any thing of our Constitution, they are to judge according to the

the known and written poſitive Laws of the Land, which preſcribe the Offices and Duties of particular perſons, and to ſpeak what their ſenſe is; but have nothing to do with enquiring into, or giving their Judgment upon the King's Title: They are to put the Laws in Execution under the King: But they can't find any Law to condemn or meddle with the Title of the King in poſſeſſion, no nor to defend it, (being called in queſtion in a proper place.) The Laws with which they were intruſted, meddle not with it the one way or the other; And they declared themſelves incompetent to give any Advice or Determination in it; tho our Author will make every particular man a competent Judge of it.

And 'tis as plain in the next place, That all the Parties agree the Parliament to be proper Determiners of ſuch a difference, (which may inform our Author, who after erecting a Court in every private man's breaſt to do it, can't find in our Conſtitution any Court for that purpoſe.) Nay the Judges tell you, The King and the Duke are before them *as party and party:* That is, Two perſons, conteſting in a proper Court, for a Judicial Determination. Caſe f. 66.

The Lords think ſo too; They oblige the King's Counſel to appear before them, and defend their Majeſties Right, as a part of the Service that they owe the King, *for their Fees and Wages:* The Duke often preſſes them for their Judgment, and at laſt they give it.

In the third place, I obſerve that this Expedient is of the Lords own finding out, and they decree it. 'Tis true, in the Chancellors repeating the Opinion of the Lords, there are the words, *If he would*, upon which great ſtreſs is often laid, not only by our Author, but others; and more then the thing will juſtly bear: The Chancellor ſays, *That it was thought by all the Lords that the Title of the ſaid Duke cannot be defeated:* That is, That none of thoſe things objected to it, had deſtroyed the Right of the Duke

Duke and his Line, for ever. *And in eschewing the great Inconvenience that may ensue, a mean was found to save the King's Honour and Estate, and to appease the said Duke if he would*, &c. (which imports no more, then that the mean they agreed upon, would be to his satisfaction, if he would be contented with reasonable terms) This, I say, is only the repetition of the Chancellor of the result of the Lords Debate: But when they come to the Judgment, that is general; That the said mean shall be taken; and this given, before any Declaration of the Consent either of the Duke or King to it; tho afterwards, upon its being opened to them, it was with great solemnity agreed unto by them, and passed by the King into an Act of Parliament.

The very Statute of 1 *E.* 4. allows this Judgment to be good; and that, by virtue of it, and the Agreement upon it, *H.* 6. should have held the Crown for his life, tho the very Right were with the D. of *York*: But it being part of the Agreement that the Lords should support it, *and keep, observe and strengthen, inasmuch as appertaineth to them, all the said things, and resist to their power, all them that will presume the contrary, according to their Estates and Degrees.* *E.* 4. gets a solemn Declaration by that Statute, that *H.* 6. had attempted the breaking the Agreement, and therefore his dispossessing him was just, &c. He thought it advisable, that the breach of the particular Agreement about the Crown, as well as the Title it self, should be declared and setled by Parliament: And indeed the very nature of all Acts of Recognition, and the constant usage of them in almost every Reign, shew the Expediency of some publick Declaration to the People, that they may know to whom their Obedience is due; and imply as much as the Preamble of the Stat. 1 *R.* 3. speaks in expres's words, which Preamble our Author quotes, becaus'e it affirms the Title of an Usurper; (He was an Usurper, but one who made as good and wise Laws, as any lawful King his Predeces'sor)

That

That the moſt part of the People can't be ſufficiently learned in the Laws and Cuſtoms which make out a Right and Title to the Crown: And that the Court of Parliament is of ſuch Authority, and the People of the Land of ſuch a Nature and Diſpoſition, that Manifeſtation or Declaration of any Truth made by the three Eſtates of the Realm aſſembled in Parliament, and by Authority of the ſame, makes, before all things moſt faithful and certain quieting of men's minds, and removes the occaſions of Doubts and ſeditious Language. This is Truth and Reaſon out of whoſe mouth ſoever it comes, or for whatever End it was pronounced; and in all Juſtice ought to protect every private Perſon in his ſubmiſſion to a Power acknowledged in that manner, againſt all the Diſturbers of the quiet of our preſent Settlement.

I come now to conſider the Obſervations he makes upon the Authorities quoted by my Lord *Coke* to juſtifie the gloſs made upon the words *Seigneour le Roy* in the 25 *E.* 3. The firſt is *Baggot*'s Caſe. To ſtate this matter fairly, as it appears on the Book, the Caſe in ſhort is this. *Baggot* brings an Aſſize of his Office, *&c.* *Ivie* the Tenant pleads, *Baggot* was an Alien, *&c.* and ſo could not hold the Office, *&c.* not being the King's Liege Subject. *Baggot* replies, his Letters of *Naturalization*. *Ivie* ſets forth the Act 1 *E.* 4. which recites at large the Pedigree and Title of *E.* 4. and the Uſurpation of the three *Henries*, and averrs, that the Patent was granted by *H.* 6. one of the Uſurpers; and ſo leaves it to the Court to judge whether the Patent was valid in Law: *Baggot* demurrs upon this Rejoynder, and *Ivie* joyns in demurrer. *Brian*, of Counſel for *Ivie*, inſiſted, That King *E.* 4. being reſtored in his Remitter, as Couſin and Heir of King *R.* 2. the Patent made by K. *Henry*, who was but an Uſurper and Intruder, was void, *&c.* I will not repeat what *Baggot*'s Councel offer, becauſe the greateſt part of it is mentioned by our Author, as well as my Lord *Coke*. After hearing what was urged on both ſides, the

9 *E.* 4. 7. *b.*
9 *E.* 4. 9.
9 *E.* 4. 11. *b.*
Caſe. *f.* 16.
9 *E.* 4. 12.

Justices say, *They had conferred with the Judges of the Common-Pleas upon all the Points objected, And they all agreed, That none of the Objections had any thing in them to arrest the Judgment*, and therefore *Baggot* recovered. The only Reflections I will at present make upon this Case is, That altho, what is referred unto by my Lord *Coke*, might be, Originally, the Argument of *Baggot*'s Counsel only, yet surely in a Point of such Consequence as this, the Judges would not have let these matters pass without some Check or Censure, if they had not approved them: They would not have given Judgment on the side of those who argued in that manner, without distinguishing what they did agree unto, and what was not to be allowed of, if any part of what they had laid down, had not been agreeable to the Law and their Opinions. As Affairs then stood, there was much greater danger, that the Judges, who owed their Offices to the Power in possession, would lessen and vilifie the Acts of the cast-off, dispossessed Prince; and that the Counsel would be afraid of speaking up to the full, what their Cause would bear; Then that extravagant things should be asserted at the Bar, and not only pass unreproved from the Bench, but have the countenance of a Resolution of the Court on their side; and that a very solemn one, upon Advice with the other Judges; which must be singly upon that point, and not any of the others, they not being worth the least debate or hæsitation.

I think this were sufficient, but I will add this further Observation; That there never has been in any Times since, (the Times of most undoubtedly rightful Kings) any contradiction to this Opinion, or so much as a Quære put upon it. *Brook* in the Abridging of it, recommends it with a *Nota*, as a thing worth observing. *Coke*, *Hales*, and *Bridgman* in Print declare this to be Law: Our Author is the first *hardy* Man that has undertaken

dertaken to ſet himſelf againſt ſo generally a received Opinion: He has taken pains in it I confeſs; but that he has not ſo throughly weighed it, as he ought, appears by the Anſwer he gives to that part, quoted to prove, That a Pardon granted by a King out of Poſſeſſion is void: If he had read the words over carefully, he would have found they amount to thus much in *Engliſh*: *If he that is now King, in the time of* Henry VI. *had made a Charter of Pardon, it would be void even* Now; *for every one who grants a Pardon muſt be King in Fact.* Theſe words won't admit of the Evaſion of its being void *in Effect only, and in its Operation*, not from a want of Authority to grant it, but of Strength to enforce and ſupport it. The only Judge that ſpeaks publickly (for they were tickliſh Times, and they thought fit to act very cautiouſly for fear of giving Offence) was *Billing*. What he ſays, plainly proves, what our Author elſewhere will not admit, That the Office of King and the Royalty it ſelf is in the King *de facto*, while he is in Poſſeſſion. This *Billing*'s words, as quoted by our Author, prove: There he gives a Reaſon why the Legitimation by *H.* 6. ſhould be good, *viz. That 'tis an Act of Grace, and it belongs to every King by reaſon of his Office* (of which Office he took *H.* 6. to be poſſeſſed) *to do Acts of Juſtice and Grace:* His other caſe of Exemptions, put in the ſame place, proves as much: For if he were not poſſeſſed of the Royalty it ſelf, he could not make any Grant to the Subject, either of Intereſt to bind his Succeſſor, or of Eaſe to diſcharge the Subject in the time of a ſucceeding Prince, from what the Law ſubjects or obliges him unto.

Caſe. *f* 24. 9 E. 4. 2. Caſe. *f.* 16. 9 E. 4. 2. Br. *Exemp.* 4.

But our Author has found an Inſtance, wherein it was held, that Grants of a King *de facto* to the Prejudice of a King *de jure*, are not valid: If I ſhould tell him, that after the rightful Heir (at leaſt he that pretended to be

Def. *f.* 41.

so, and to avoid his Grant upon that ground) had agreed to submit to him as his King for his Life, he was not an Usurper upon him; then his Case will prove too much. But the thing it self is not to be wondred at, that a succeeding King should *find* or *make* a Reason for the resumption of Crown Lands. There are People abroad in the World that would have helpt *Henry* II. to another, *viz.* That the Revenues of the Crown are so far a Trust in themselves, being given for the Support of the Government and Defence of the Kingdom, that they are not of Right alienable.

But, to return to *Baggot*'s Case, I agree, that the Coun-
Case. *f.* 17. cil do not argue, or the Judges determine (as our Author observes) from any Statute of this Realm: There was not any such, nor any need of one. Common Law and common Reason justified their Resolution. And if the Reason of the Thing, and Necessity of Government determined that case to them, where there was not any thing else to Govern it: Had not that Man need have a great deal of Wit and Subtilty who undertakes to prove, That as plain words in an Act of Parliament as can be devised, having the same Reason and Necessity to enforce their being taken in their common and ordinary sense, ought to be expounded away by the Judges into quite another thing, only to avoid their falling in with that reasonable and convenient sense.

But this is not the only Book-case before the Statute of *H.* 7. which Rules our Point in effect. When *Hen.* 7. had obtained an entire Victory, killed King *Richard* in the Field, and was Proclaimed King, he resolved soon to call a Parliament: One of the ends of his doing it speedi-
Bac. Hist. *H.* 7. *f.* 11. ly, as Lord *Bacon* says, was, *To have the Attainders of all his Party (which were in no small number) reversed, and all Acts of Hostility, by them done in his Quarrel, remitted and discharged:* And accordingly Acts were passed

paſſed to that purpoſe. But before it was done, a Queſtion in Law was moved. Divers of the moſt conſiderable favourers of the King's Party, during the Reign of *Richard* the Third, were attainted by Outlawries and otherwiſe for that cauſe: Or, as my Lord *Bacon* expreſſes it, *His Partakers were attainted for Offences incident to his Service and Succour.* Many of theſe were Returned Knights and Burgeſſes for the Parliament; the Judges are adviſed with upon it, who forthwith aſſemble in the Exchequer-Chamber, and all agree, *That the Knights and Burgeſſes who were attainted, ought not to come to the Houſe till a Law were paſſed for the Reverſal of their Attainders; nor ought to be in the Houſe at the time of the Reverſal.* Lord *Bacon ubi ſup.* 1 *H.* 7. 4. Br. Parliament 37.

But they went further, and unanimouſly Reſolved, That there was no manner of Neceſſity to do any thing for the Reverſal of the King's Attainder (who was attainted too;) For that *Eo facto, that he took upon himſelf the Royal Dignity to be King, he was diſcharged of all Incapacities, and needed not any Act for the Reverſal of his Attainder.* My Lord *Bacon*'s Remark upon this Reſolution is, That it was *A grave and ſafe Opinion and Advice, mixed with Law and Convenience.*

Now, in this Reſolution, the Judges muſt either take *H.* 7. to have a Right to the Crown, or that he had not, but was an Uſurper. That they took the former for granted, is, I think, very plain: Or at leaſt they muſt know, that the Lady *Elizabeth* (whoſe Cauſe he undertook, and with whom, *by Pact precedent with the party who brought him in, he was to Marry*) had ſo. If they did ſo, then they plainly determined that a Conviction of a Man under an Uſurper, for High Treaſon, where the very Act of the Treaſon was, Adherence unto, and Attempts to recover the Rights of the diſpoſſeſſed injured Prince, ſtill remains, even after the Rightful Prince has regained

regained possession of the Throne; since all Incapacities continued upon those *Loyal* Men, till their Convictions were Reversed by Parliament; That is, till a *new* Law was made to help them: Till that was done, those who had the Execution of the present Laws only, could not say other than that the Offence whereof they were convicted (which was an Attempt against the Prince then in possession) was High Treason; and they were still obnoxious to the Punishments the Laws inflict on Traytors; although what they attempted was done to serve and support the Interests of the Rightful Princes.

If the Judges took *Hen.* 7. to be an Usurper, yet we gain this point by their second Resolution: They agree him to be invested with the Royal Authority by his *Assuming the Crown*, and the Submission of the People: By that, his Natural Person is changed, and so *consolidated with the Politick Capacity*, Plow. Com. 238. *b.* that every Imperfection was purged, and all the Objections that lay either against his Person by *Rich.* 3. Attainder, or against his Title, which was for ever condemned by Act of Parliament, removed.

Temp. H. 6.

And this Opinion of the Judges in *Henry* the Seventh's case was not the first Instance of this kind, as appears by the Case of *Hen.* 6. mentioned by *Townsend*, who after his Resumption of the Crown held a Parliament, though he were before attainted and disabled; *For*, says the Book, *all that was void when he took the Crown upon himself.*

1 *H.* 7. 5. *b.* *Br.* Parliament 105.

Neither was the Notion of the Person being changed by the Assuming the Crown, new, or framed for that particular Case: For we find that when *Rich.* 3. assumed the Royal Estate upon himself (and he was undoubtedly an Usurper) it was found necessary to make a Statute in the first Year of his Reign, That *where he was enfeoffed joyntly with others to an Use, the other Co-*

feoffees

feoffees ſhould ſtand ſeized to the Uſe; where he was ſole ſeized, the whole Eſtate ſhould be veſted in the Ceſtuique uſe; and this, becauſe by the taking the Politick Capacity on himſelf, his Natural Perſon was gone, and *Seignior le Roy* can't ſtand ſeized to an Uſe.

If the Treaſon of Sir *William Stanley* in the time of *Hen.* 7. were what my Lord *Bacon*, and our Author relate it to be, *viz.* his ſaying, *That if he were ſure that* Perkin *were King* Edward's *Son, he would never bear Arms againſt him:* It goes a very great way in the ſhewing what the Opinion of that time was; and that the Lawyers don't agree, that the Statute of 11 *Hen.* 7. has enlarged the ſenſe of *Seignior le Roy*, but that they thought 'twas always the Duty of the private Subject to pay his Obedience to the poſſeſſion. This Caſe, I ſay, proves not only that *it is Treaſon for a private perſon to overrule the Title of the King that is in poſſeſſion*, which my Lord *Bacon* deduces from the words, but it makes it Treaſon to refuſe his Active Obedience for the Support of that King in poſſeſſion, even againſt him, who, he is ſatisfied, has a better Right. This I am ſure muſt be the Opinion of thoſe who condemned him; and the Hiſtorian in that place takes Notice that *the Judges of that time were great and learned Men, and the three Chief of them of the Privy Council.* *Bac. H.* 7. *f.* 134 Caſe. *f.* 3.

And to ſhew how far the Law-givers of that time lookt upon private Subjects to be bound up by ſuch Acts of Government made in the time of an Uſurper, as our Author would have called *Inauthoritative, null, and void*, until an equal Power have adnulled, or declared them to be ſo, I will refer my Author to the Year-Book, 1 *Hen.* 7. *f.* 5. *b.* There he will find a ſpecial *Memorandum* of the Reverſal of an Act of Parliament, which Act was ſo falſe and ſcandalous, that, upon Advice of the Juſtices it was not thought fit to recite the Matter or

Effect

Effect of it in the Act of Reverſal, leſt it ſhould remain in remembrance: And this Act was made directly againſt the Right of the Children of *Edw.* 4. to Baſtardize them; yet a ſpecial Note is made of it, That having been done by a Parliament, there was a neceſſity for another Act of Parliament to take this Scandalous Bill off from the Roll. They it ſeems did not look upon the private Judgment of the Clerk of the Parliament to be ſufficient to adjudge of our Author's *Nullities in themſelves*; though that private Judgment determined in favour of what they lookt upon to be the Right, joyned with the Poſſeſſion.

I come now to conſider the Statute 11 *Hen.* 7. *c.* 1. the Preamble of which declares, *That the Subjects, by reaſon of their Duty of Allegiance, are bound to ſerve their Prince and Soveraign Lord for the time being, in his Wars, for the Defence of him and the Land, againſt every Rebellion, Power, and Might reared againſt him, and with him to enter into Service, if the Caſe ſo require.*

And that whatever the Succeſs fall out to be, 'tis not reaſonable, but againſt all Laws, Reaſon, and good Conſcience, that they, ſo going with him in his Wars, attending his Perſon, or being elſewhere by his Command, ſhould loſe or forfeit any thing, for doing their true Duty and Service of Allegiance.

Thereupon 'tis Enacted and Eſtabliſhed by that Parliament, *That no perſon from thenceforth, that attend upon the King and Soveraign Lord of this Land for the time being, in his perſon, or do him true and faithful Service of Allegiance, ſhall for that be vexed or troubled, either by Act of Parliament or otherwiſe.*

Our

Our Author by what has been already ſaid, will find the miſtake that he is under, when he ſays the Lawyers agree, *That it is this Statute only, which has extended the words* Seignior le Roy *in* 25 Edw. 3. *to comprehend an Uſurper in poſſeſſion, as King for the time being, whereas before,* 25 Edw. 3. *meant Lawful and Rightful Kings only.* What is already ſaid to that purpoſe, will, I believe, ſatisfie every one, that the Judges, who are Expoſitors of Statutes, and were to put that Act in Execution, did never look upon themſelves as competent for the determining the Title of the Crown, but lookt upon him to be *Seignior le Roy* within that Act, who executed the Office of King, in adminiſtring Juſtice, and protecting and defending the People. The end of that Statute 11 *H.*7. as I have ſaid before, was not ſo much to make a ſolemn Declaration of the Law (which all through it is taken for granted, as an indiſputable Opinion of that time at leaſt) as it was to condemn the way that had too often been lately taken, to deſtroy the good Effects of the Law in that particular; by making ſo many revengeful Acts of Attainder upon every change. They endeavoured, as far as the Nature of the thing would admit of it, to tie up, even the Hands of future Parliaments, from acting contrary to that eaſie and reaſonable Rule: And having done that, little thought they had left a Liberty to private Men to vent their Opinions and Fancies, raiſe Scruples in the minds of People, and write Books to prove that a King is no King, nor to be obeyed: And that a bare Right to be a King, (which ſuppoſes and imports in the very terms themſelves his being diſpoſſeſſed of the Throne and Office) makes him, the Only Perſon meant by the words *Seignior le Roy*; whereas he that is in full poſſeſſion of the Office and Government, is quite out of them. Def. ſ. 5.

But to shew our Author that the Notion was not quite new, and first introduced by this Statute to serve a particular turn, nor the Opinion of Lawyers only, I would refer him to a Treatise, Entituled, *An Historical Account of some things relating to the Nature of the* English *Government*; there, *f.* 40. He will find the words of a great many Historians quoted, which I will not Transcribe, all censuring the Act of those Nobles, who, upon dislike to *William Rufus* that was possessed of the Government, did endeavour to dethrone him, and advance his Elder Brother *Robert* to the Throne, as an *Execrable Fact*, calling them *Traiterous*, *Perfidious*, and *Perjured* Persons: And declaring, that they who sided with *William*, were Faithful to *their Earthly Lord*: Though as appears in the same page, those very Historians agreed, that *Robert* had manifest Right to the Kingdom by course of Hereditary Succession.

Nay, for want of other Authorities, I would venture to make Use once more of our Author's Act 1 *Edw.* 4. which not only very fully asserts, *That the Usurpers were by their Usurpation possessed of the Regal Power, Estate, Dignity, Preheminence, Possession, and Lordship of* England, to which purpose it was quoted before, but goes on; *By* Edward *the Fourth's removing* Henry *the Sixth from the Occupation, Usurpation, Intrusion, Reign, and Governance of the same Realm of* England *and Lordship, to the Universal Comfort and Consolation of all his Subjects and Liege Men, plenteously joyed to be amoved and departed from the* Obeysance *and Government of the Unrighteous Usurper*, &c. Our Author may with little pains learn what the import of the Term *Obeysance* was at that time lookt upon to be.

I con-

I confeſs, the Act of 11 *Hen.* 7. to me ſeems to make the moſt Solemn Declaration of this, as a Rule not to be varied from, That Allegiance is due to the King for the time being; And 'tis the Subjects Duty to pay it to him: And I would deſire no more from any Man, but that he would read it over attentively, to make him a Judge between my Author and me, whether fuller words could reaſonably be thought of to ſilence all Opinions to the contrary: Let us ſee how our Author quits himſelf from them.

I believe he will not rely much upon the firſt Objection he ſeems to make, *That only the enacting part of a Statute is Law:* He brings it in with an *If*, and never takes it up again: ſo that at preſent, without detaining my Reader in the Proof, that it is day when the Sun ſhines, I will take it for granted, That what an Act of Parliament recites or declares to be Law, is ſo. And then inſtead of what our Author has ſet down as *all that this Statute proves*; It proves thus much at leaſt, *That it is the Duty of every private Subject, to attend and pay his Allegiance to the King in Poſſeſſion; And contrary to the Laws as they ſtand at preſent, and to all Reaſon and good Conſcience, even for a Parliament, whoſe Power can't be withſtood, to make his ſo doing Penal to him.*

Caſe. f. 25.

Caſe. f. 27.

I will agree to him, that *Hen.* 7. himſelf had not practiſed according to this Rule, but made uſe of the ſame Liberty former Kings and Parliaments had taken, of reaking his Vengeance on thoſe that oppoſed him: He was too fond of the Crown; He would not elſe have ſet up for it, without any Right at firſt: And it is not to be imagined that he, who made no ſcruple of obtaining it againſt Right, and put off ſo long the making his Poſſeſſion juſt, when he had ſuch an Opportunity of doing

Def. f. 42.

it, by marrying her who had the undoubted Right, would make any difficulty of ſecuring himſelf in that poſſeſſion by any means whatſoever: This criminates him in his Morals, proves him to be a Man whom Intereſt did Rule, to the doing things which he was convinced were againſt Reaſon and Conſcience; and proves no more. Nay, I muſt offer in his Excuſe, that he afterwards made what amends he could, by condemning his own former ill, and uſing his utmoſt endeavours, that the poor Subject ſhould never be harraſſed and puniſhed at that barbarous rate more.

Case *f.* 29. Can a Man be real in Objecting to a Law, agreed unto and paſſed by thoſe Perſons, whom the whole Body of the Kingdom thought fitteſt to repreſent them, and to whoſe Integrity and Underſtanding they entruſted their deareſt Concerns: That it was made by an Uſurper
Case. *f.* 18. in Title, and 'tis not (*he determines it*) for the good of the Community: Yet ſuch Laws as are for the Publick Good, he agrees, are valid, though paſſed by an Uſurper. Nay, our Author goes further, and enquires, by helps *dehors* as the Lawyers call it, Foreign to the words of the Act it ſelf, what the End and Deſign of the King *under-hand* was, in procuring the Statute; and that, he diſcovers to be nothing leſs, than to ſecure himſelf in his Unjuſt Uſurpation; becauſe *Perkin Warbeck* happened to be up in Arms about that time; ſo that he propoſed to himſelf to ſecure his Title by that Act againſt the Houſe of *York*: And that *Deſign* ſhall make this Statute *void*, though *Perkin* prove the Son of a Beggerly *Jew*, and the Queen, who had long before been Crowned, and Reigned with him, had undoubtedly the true Right to the Crown.

Neither

Neither can I yet work my ſelf up to think, That the Enacting a new Law, in a particular Caſe, contrary to the purview of a precedent general one, is a total Repeal of that Law. As for inſtance: Suppoſe in the Caſe of my Lord *Strafford*; Becauſe he was attainted by Act of Parliament, without Proof by two Witneſſes, and for Facts, none of which, conſidered ſingly and by themſelves, amounted to High Treaſon, but made a great accumulative Crime, therefore, if it had not been for the Caution uſed, That the like ſhould never be drawn into Precedent or Example, from that time forward, a load of leſſer Crimes muſt have grown up into one High Treaſon, and the Statutes of 25 *Edw.* 3. *&c.* had ſtood entirely Repealed in thoſe points: *They*, for ſo much, *having in effect been declared to be null and invalid by a Lawful King and Parliament.* Caſe. f 31.

But beſides this, as to his Inſtance of the Duke of *Northumberland*'s Attainder (not to mention a great many other things which hinder its amounting to any manner of Proof of what he brings it for) I muſt tell him, that the Act confirming that Attainder did not in the leaſt contradict the Statute 11 *Hen.* 7. for that he was attainted upon the Statute 25 *Edw.* 3. without being within any help from this Statute; And therefore his Attainder was Legal, though it had never been declared ſo by Act of Parliament; though the Queen thought fit to make matters ſure, and put that in for Company, with the Attainders of ſeveral others, who were attainted upon other accounts. The Lady *Jane* was never ſuch a *Queen in poſſeſſion* as is within this Law, or to be accounted ſo: She was, 'tis true, Proclaimed by ſome few of her Friends, and ſo was the late Duke

Duke of *Monmouth* in the West? But did ever any one say or imagine, that such a Possession entituled one to the Allegiance of the whole Kingdom? That is as Extravagant on the one side, as our Author's Opinion on the other: Temper them, and make it necessary to the obtaining such a Possession without a Just Title, as shall claim the Duty of Subjection, That there be a quiet and peaceable Submission to the Person who fills the Throne by the Body of the Nation, a Recognition of him by the States, the Treasure, Power, and Strength of the Kingdom in his hands, Publick Justice administred only by those that are commissionated by him, *&c.* and you'll find the *Golden Mean.*

The Observation made by the Author, That Queen *Mary* was no more than Proclaimed, when the Duke was Tried and Executed by her Authority, makes nothing against this: She had *de jure* a Title, and a notorious one too, for that the Succession was limited unto her by Name in *Henry* the Eighth's Acts for the Succession, besides her being his Eldest Daughter: And I will grant to him, that he is much in the right, when he affirms, *That* (at this day) *the next Heir of the Blood is actually King, and in possession, from the very moment of his Predecessor's Death, and has a Right to the Allegiance of his Subjects from that time.* I have told him all along, though less may amount to a disturbing or disquieting him, that there must be more than a bare Proclaiming of another to dispossess him: The affirming of which, is not in any sort inconsistent with their Principles, who maintain, that Submission is due to a King, who has obtained a *full* possession of the Throne. So that the Author might have spared the *mannerly* Question he puts to Dr. *Sherlock* upon this Occasion. *Defence, f.* 55.

Case. f. 48. Def. f. 7.

His

His Argument is the ſame, *Caſe. f.* 34. King *Henry* the Eight having indulged himſelf very greatly in the taking and diſmiſſing of Wives, did from time to time, according to the run of his Affections, make ſeveral Laws for the Settlement of the Succeſſion; and laid great Penalties on the Infringers of thoſe Laws, and particularly on ſuch Perſons as ſhould Uſurp upon others, to whom, by the plain and expreſs words of the reſpective Acts, the Crown was limited and entailed: Theſe Laws were very neceſſary at that time, becauſe from the unuſual Liberty he had taken in that particular, of neceſſity *great ambiguities and doubts muſt ariſe concerning the ſeveral Titles, which might be pretended to the Crown, and thence would probably enſue great effuſion of Blood*, &c. as the Statutes 25 *H.* 8. *c.* 22. &c. ſpeak.

To prevent this, he very prudently takes care to tell his Subjects, by Act of Parliament, where their Obedience ſhall be paid, names the Perſons in courſe as they ſhould ſucceed; And forbids, under the greateſt Penalties, any *One* to Uſurp upon or Claim a Title otherwiſe than according to thoſe Limitations. Theſe Acts (ſuppoſing that Acts of Parliament can alter the Hereditary Courſe of Deſcent, which *perhaps* my Author and ſome few others will not agree, but I can't bring my ſelf to make any doubt of) amount to no more than this: That any who ſhould offer to break through that Limitation, ſhould be Uſurpers, and thoſe that ſhould aid and aſſiſt them therein, be Traytors. I have not yet pretended that thoſe who aid and abett one that has no Title, and put him into the poſſeſſion of the Throne, are innocent; or that the Act of Exalting an Uſurper to the Throne, is juſtifiable: All that I contend for, is, Obedience

dience to them after they are in quiet poſſeſſion: So that theſe Acts make nothing for what my Author intends to prove, or againſt what I propoſe to my ſelf to defend: They laid not any Obligation on Conſcience contrary to the Statute 11 *Hen.* 7. But provided only to ſecure the Poſſeſſion to thoſe mentioned in that Settlement, by making it Death for any to attempt, or aſſiſt in the breaking of it. But I will for once ſuppoſe, thoſe Acts had in expreſs words Enacted, That, if Perſons contrary to thoſe Limitations, did get into the Throne, and obtain a full Poſſeſſion of it, all thoſe who had been Aſſiſtant unto them in their ſo doing; Or who ſhould afterwards ſubmit to them, ſhould be puniſhed as Traytors: Yet this would amount to no more, than that the general precedent Law, and the Obligation of it, was Suſpended and Repealed as to this particular Inſtance; As if it had in expreſs terms ſaid, In theſe particulars, when the Right of Succeſſion is ſo plainly determined to the Subject by a competent Power, that there is no poſſibility of his being miſtaken in it, unleſs he be ſo, *wilfully*: Whoever attempts any thing contrary to them, ſhall not have benefit of Indemnity from any former Laws, but the Perſon ſet up, and all his Adherents, and thoſe that ſupport him in his Uſurpation, ſhall be puniſhed as Traytors. This would have been ſo far from a total Repeal, that it would rather have been a Confirmation of the precedent Laws in all other caſes but thoſe particular Inſtances.

The

The ſame is to be ſaid to the Oaths enjoyned by thoſe Laws of *H.* 8. for the eſtabliſhing the Succeſſion: Suppoſing them to have laid an Obligation upon Conſcience, contrary to the general Purvieu of the 11 *H.* 7. for the time to which they extended, yet the matter of them is long ſince ceas'd: And I can't find any Reaſon or Authority to prove, that a contrary proviſion, only for a fixed and determinate time, does, *for ever*, repeal a general poſitive Law.

The late Oaths of Obedience in Queen *Eliz.* and King *James*'s times, have left the Title to the Crown, as general and unſettled as it was in the time of *H.* 7. So that the Subjects are now obliged by Vertue of thoſe Oaths to the true Succeſſors in the Kingly Power; and I think what is already ſaid, makes it plain, that a private Subject muſt look upon thoſe who are in full and quiet poſſeſſion of the Throne, to be truly and lawfully ſo, till they are either deveſted of the Power, or their Right condemned by thoſe that have Authority to do it. The word *Heirs*, I own is joyned to *Succeſſors* in theſe Oaths; but if either, as the Lawyers ſay, *Hæres dicitur ab Hæreditate*, or the words of themſelves, being joynt, extend only to ſuch an Heir as is a Succeſſor, (as I muſt think, till I hear better Arguments to the contrary, then I ever yet have met with,) theſe Oaths will make for, not againſt me.

However I can't find any contradiction between theſe Oaths and the Statute 11 *H.* 7. They do not ſpeak *Ad idem*. 'Tis too groſs to be put upon any Man at this time of day, to ſay, Theſe Oaths oblige us to any certain Perſon under the name *Heirs and Succeſſors* during the life of the Poſſeſſor; ſo that the end of theſe Oaths was to put an Obligation on Conſcience to prevent the Act of Uſurpation, and preſerve the

Government Hereditary: The Act of *H.* 7. supposes that settled, and declares what a Subject is to do when it is so.

Besides I think the Lawyers generally agree it for a Rule, *That it must be a very plain Contrariety, and absolute Inconsistency, that shall effect a Repeal of a former by a subsequent Statute, without express words of Repeal: And that a Law being once established, with the universal consent of the whole Kingdom, it must not be look'd upon to be abrogated by any strained Construction of general and ambiguous Words.* And if this be true, I am sure the Stat. 11 *H.* 7. stands yet unrepealed by any of the Laws our Author has produc'd against it.

I can't but wonder to hear a private person determining, That a *Statute*, That is, a Law of the Land, must be lookt upon as *null and invalid, in respect of the matter of it*, because in his Opinion, *It establishes Iniquity*, and is made, as he says, *Case* f. 32. *To the disherison of a lawful King*, That is, a King of the Laws making. In plain *English* this amounts to thus much; The Title which the King has to the Crown, tho it belongs not to him, either by the Law of God or Nature, but by a positive Law of the Land, can neither be wholly defeated, or abridged in part, nor the Power or Rights of it moderated for a certain time, by as positive a Law: This is a very Paradox, and needs a man of our Author's Learning and industry to make it look colourable.

Case *f.* 36. Defence *f.* 47.

This and a great deal more of our Author's arguing, *Case* f. 37, 38, 39, 40, 41. will fall to the ground, if he will, till he proves the contrary, admit, 1. That the word *King* does not necessarily import in it self, in all places, any certain and determinate Rights and Priviledges; but that the positive Laws of the Land are Bounds unto, and may prescribe the Order and Form of legal

legal Ligeance, and may enlarge or abridge thoſe Rights which the name *King*, according to the natural extent and ſenſe of the Word would have entitled the Perſon unto. And 2*dly*, if I could prevail upon him not to lay ſo much ſtreſs upon that Word, when 'tis joyned to *de jure*; not ſuppoſe him ſtill in poſſeſſion of the Office, but fairly Engliſh it, a Perſon who has Right to the Office and Government, but is wrongfully put out of it.

The fallacy grounded upon the latter of theſe, runs through ſo many parts of the Book, that more than half his arguing part might have been ſaved, if he he would have ſtated it truly: If he would but agree to me, that the word *King*, is rather a name of publick Office than perſonal Right, there would be an end of a great part of the Diſpute. Let us turn it into *Governour* and ſee how the Queſtion will then ſtand. *VVhether in this Government, the Subjects are to pay their Service and Duty to him that is in Fact their Governour, tho he obtained the Government by unjuſt means, or to him who ought to be their Governour, but plainly is not, nor has a Power to exerciſe any Acts of Government, either over, or in defence of them.* I am apt to think it would be an hard thing for a man of very great parts, ſo much as to amuſe any man, if he would ſtate the caſe ſo; or to perſwade him, that the Duty of the perſon governed, has any relation to the Right of the perſon, diſtinct from the Office. In ſhort, That private man goes beyond his Line who looks upon him that is out of Poſſeſſion to be his King, or acts accordingly, when the Throne is filled with a Poſſeſſor qualified as I have before ſet down: And if ſo, the Statute 11 *H.* 7. implies nothing of that Contradiction which the *Caſe f.* 53. fixes upon it.

I would not be mistaken in this, so as to have it objected to me, That I am coming within the reach of that *mischievous Position* of separating the Person and Office: It was always my Opinion that the doing it (as it has been formerly made use of) would be in consequence very pernicious and is contrary to the Rules of Law. The mischief of that Position is, the distinguishing between the Kings Acts and Capacities, while he is a King and in Possession: to say some of his Acts are those of his natural person, separated from his politick Capacity, and upon that supposition to take a liberty of acting against his natural Person, as supposing that distinct from his politick Capacity. This appears to be the Mischief, by what is quoted out of *Calvin's* Case; where 'tis said, *That Ligeance is due to the natural Person of the King, which is ever accompanied by the politick Capacity, and the politick Capacity as it were appropriated to the natural Capacity; and 'tis not due to the politick Capacity only, that is, to the Crown and Kingdom distinct from his natural Capacity.* And by the Act of Uniformity, which declares it a Trayterous Position, *to take Arms by the King's Authority against his Person*: This shews, that the ill of the distinction condemned there, lies in the separating the Capacities when they are really joyned; that is, when the natural Person is in possession of the Kingly Office: to set him up to fight against himself, his own Authority against his Person; this is contrary to Law, which, as it appears before, *consolidates* the natural Person with the politick Capacity. I am so far from denying this, that it is the ground whereupon I take Obedience to be due to a King *de facto*: But the mischievous part does not at all reach our Case, where we suppose him, who has a Right to be King, to be utterly dispossessed and devested of the Office, and

Defence *f.* 25.

the

the Right of the Poſſeſſor ſolemnly recognized by the Body of the People: There, 'tis not a nice diſtinction that ſeparates between the Capacities, but evident Fact and Truth, common Senſe, and the Laws of the Land; and to the Perſon, as a Perſon deveſted of the Office, Allegiance is not due. That it was a very great wrong unjuſtly to deveſt the Perſon of the Office, and put another into it, can't be doubted; and 'tis a part of that wrong, that he is thereby deveſted of that which makes the Relation between him and the People, that of right ought to be his Subjects, and pay him Allegiance; but till he reunite the Office to his Perſon, the wrong remains, and the Relation during that time fails.

It may be very well maintained, that the Statute 11 *H.* 7. ſhall have all the Effect and Operation the plain Words of it will reaſonably bear; and yet none of thoſe diſmal Breaches upon the Conſtitution, and Calamitous Conſequences ſet forth, *Caſe*, f. 38. attend it.

That the Fundamental Conſtitution of *England* is a Monarchy, and that ſettled antecedently to any Statute Law, will be very readily agreed to him by me: But he goes a little too faſt when he infers thence, *That therefore there muſt of neceſſity be ſome certain perſon in every Age, in whom the Conſtitution veſts a Right; by vertue of which, he is lawful and rightful King of this Realm*: For 'tis not of abſolute neceſſity that the particular Race and Family ſhould be part of that Fundamental Conſtitution.

May it not be rationally ſuppoſed that the Framers of our Government proceeded by degrees; firſt, debated what the form of the Government in general ſhould be; and fixt upon a Monarchy: What kind of Monarchy would make another ſtep, and I will ſuppoſe

poſe that, to prevent the ill effects of Ambition and canvaſing for it, they agreed, it ſhould be an Hereditary one, ſuch as ſhould be governed by the courſe of deſcent, not elective: This in common ſence it muſt be preſumed they did, before they came to fix upon certain Perſons or Families, into whoſe hands they ſhould put the Government: Nay 'tis impoſſible to maintain our Government to be a limited or mixt Monarchy in its nature, without ſuch a ſuppoſition: ſo that I can't by any means look upon the particular Family to be any part of the Original and Fundamental Conſtitution; but at moſt, only a ſecondary one, a putting the Conſtitution that they had agreed upon into Act and Execution: And therefore it may very well be, for any thing that I can find in reaſon to the contrary, That the Government may fall into the hands of perſons, that have no relation to the Line of the Princes firſt ſubmitted unto, who ſhall yet have a Right by vertue of the Fundamental Conſtitution.

Caſe f. 2. Our Author has almoſt yielded me this in his firſt Preliminary: But to vary that inſtance a little: Suppoſe during the Life of him that ſhould happen to be the laſt of the Race of our Princes, He and his Parliament ſhould agree, that after his death another Perſon and his Race ſhould ſucceed to the Throne according to the directions and Meaſures preſcribed by the preſent Laws, would any body queſtion his right to ſucceed? The Fundamental Government would be ſtill the ſame; A mixt Monarchy according to the preſent Conſtitution: And I cannot perſwade my ſelf that in the Conſtituuion it ſelf, the intereſt of the particular Family was ſo highly regarded, as that the one muſt neceſſarily fall with the other. Our Author indeed I find thinks, that becauſe *Hereditary* is joyned to Monarchy, when once it falls to another Family, the Monarchy

Defence f. 12.

narchy is gone. An Eſtate in Fee-ſimple has this Quality, that it is an Eſtate of Inheritance: That is, an *Hereditary* Eſtate: If therefore the poſſeſſor transfer it to a Stranger, muſt the Eſtate be gone? ſuppoſe *Hereditary* ſhould be expounded in the one caſe as well as the other, to ſignifie ſuch an Eſtate as will of its own nature deſcend to Heirs, and veſt in them a Title if the Diſcent, be not interrupted, by ſuch methods as the Law allows of: And be lookt upon, to be ſet in oppoſition to *Elective* in the one caſe, and an Eſtate *determinable upon the death of the Party* in the other.

I confeſs I ſhould think it an exceeding of their Power, for a King and Parliament to turn this Government into a Common-wealth; for they act under the preſent Frame and Conſtitution: Whenever that is diſſolved, they have no longer a right to act as Repreſentatives of the People; ſo that they cannot, *for them* ſubmit to a new form of Government. To the doing any thing of that kind, there muſt be firſt a diſſolution of the preſent Frame, and then, either all muſt joyn in the erecting a new one, or they muſt, after they are reinſtated in the Liberty which they had by nature, agree upon ſome method of being repreſented, and delegate their Right and Power to ſuch Repreſentatives. This ſhews thatthis opinion does not offer at the warranting a ſubjection to any Uſurper, but ſuch an one as is in poſſeſſion, under the form the preſent Conſtitution allows. All others, not agreeable to this Frame of Government, are in, *above* or *beſide* the Law, and conſequently have not Right to *Legal* Allegiance, which is the reſult of the preſent Conſtitution, and of Laws made for the preſervation of that. Such a Power may hold me in ſubjection as a conquered Man or a Slave, and for the obtaining my Life or Freedom, I may anew ſtipulate with them;

and

and from that time they may justly claim my Allegiance by vertue of that stipulation: I may stipulate anew, I say, if my former allegiance obstruct it not: But that may very well fall out to be the case, for till there is an entire dissolution of the Government (whether that must be done by the agreement of all who have an interest in it, or that a majority will determine the rest) I own that Allegiance is due from every private Man some where; And I am sure I may, without contradicting any thing I have hitherto said, fix the right to it in the Person of the King *de jure*, where the Kingly Office is not exercised by any other: But where another is possessed of the very Kingly Office, which is wrought into the Constitution it self, and he puts in execution all the same Laws by which rightful Kings ought to govern; to that Office, and the Person possessed of it, my Allegiance is by those Laws due, and no Law makes me a Judge of the King's Title.

And it was upon this Ground undoubtedly that my Lord Chief Justice *Hales* (who plainly held the Law in the *Case* of the Statute 11 *H.* 7. to be as I now maintain it) would never try any Treason or other Offen-
Case, *f.* 4. ces against the State, as our Author says, while he was Judge under *Cromwell*.

But to return: What if I should suppose, (as some *wise* Men have affirmed) that when our Ancestors heretofore submitted to a certain Family, to take away occasion of Factions and making Parties, they confined the Crown to that Family, but did not so strictly oblige themselves to him who should be next in Course of descent; but that the States of the Kingdom, who represent and include the body of the whole People, if they found him absolutely unqualified and unfit for the Government, might skip over him;

him, ſtill keeping to ſome of that Line. (And ſince what the Original Frame of our Conſtitution was, is not derived to us with any certainty, by Hiſtory or Authentick Records, that may well be ſuppoſed to be our Conſtitution, if conſtant Practice and Uſage, till very lately, be a probable proof of Right in things where the poſitive Rule is loſt.) If this were the caſe, what would then become of the Suppoſition of *a certain Perſon, always lawful and rightful King, by Vertue of the Original Conſtitution*, &c. But not to rely upon this, I muſt take leave to believe what I touch'd upon before, That it was the Form of the Government it ſelf, of which our Anceſtors, who framed it, were ſo fond, and not of the particular Perſon or Family; tho they were by that Form to have the greateſt Truſt and beſt Share (comparing them with particulars, not the whole Body) in it: And therefore I am fully ſatisfied, as I ſaid before, that the very Fundamental Conſtitution may remain, tho the Family ſhould be changed by a Competent Power; and that no Injury or Injuſtice is done them thereby, ſince their Right was given them only by poſitive Laws, and may therefore be taken away again by the ſame means: And if ſo, after all our Author's Labour, the Statute 11 *H.* 7. does no ways break in upon our Conſtitution. If our Author would but explain the words *King de jure*, as I have all through this Paper preſs'd him to do, we ſhould eaſily rid the Stat. 11 *H.* 7. of the Contradiction which he ſuppoſes it implies. Caſe *f.* 8. 38. Caſe, *f.* 39

A *King de jure* has a Right to ſomething, as he ſays; that *ſomething* is the poſſeſſion of the Throne, which will conſequently draw the Royalties and Revenues of that, with the Allegiance of the Subject. But till he attains that Poſſeſſion, in vertue of which the Right

to those Royalties, Allegiance, *&c.* belongs to him, he must content himself without them.

And the same Answer serves to his other Objecti-
Case, f. 40. on, *That this Statute is against the Law of Nature*, which our Author from that Huddle of Inconsistencies. *Calvin's* Case, says, *makes Faith, Obedience, and Ligeance, due to the lawful King*, &c. *and some parts of 'em indispensable, and not to be transferred.*

It is not worth the while to argue any thing from *Calvin's* Case, the Authority of which can never be of advantage to either side, because there is scarce any one Proposition (unless it be the very point adjudged) advanced through that whole Case, as 'tis reported by my Lord *Coke*, but what may be answered (that is, contradicted) by something else of the same Author in the same Case; but to consider according to reason, as much of it as our Author makes use of. I will not dispute at present but that Obedience to Governours is due by the Law of Nature; that is, That the Law of Nature does extend it self to Civil Societies when they are framed; and in general obliges such as are in the Condition of Subjects, to pay their Governours all that Duty, which, according to the Frame of their Government and Laws, is necessary to the Maintenance and Welfare of that Society: Other natural Allegiance there is none; nor does the Law of Nature (tho our Author affirm the contrary, without offering any Proof or Reason for it) *lay before the Subject any certain Duties which they are to put in practice, whether the particular Laws of the Realm enjoyn them or not, and such as no human Authority can dispence with, as long as they stand in the Relation of Prince and Subject.* This is a very wild Notion, and can have no Foundation in Reason: Take away the Relative Terms of *Prince* and *Subject*,

And

and ſuppoſe that a Nation ſubmits to a particular Perſon after this manner: He ſhall have Rule over them, and govern according to ſuch particular Rules, as then are, or with their conſent afterwards ſhall be agreed upon, and none other. Is not all the Freedom which they had by Nature, but their being obliged to ſubmit to the putting thoſe Rules in execution, left with them, and unſubmitted; May not any poſitive Law afterwards alter, enlarge, or abridge thoſe meaſures of Obedience and Submiſſion, which were the Creatures of poſitive Law at firſt? It may be ſaid, it will be inconſiſtent with the name of *King* to have no Allegiance due to him. I would ask the Objector, Which is more reaſonable, that a Notion, the Pedantry of affirming poſitively what the *natural* Senſe of a Term is, ſhould have Power over, and render inſignificant, or repeal the plain Words of an expreſs Law; or that the Law ſhould for once frame a new, tho it may be an improper Senſe, for the Terms, and over-rule the Grammarian? If the Law ſhould in expreſs words ſay, That he that has a juſt Title to the Crown ſhall be ſtiled *King de jure* while he is out of Poſſeſſion, (tho that is not ſo, nor is that name ever allowed him till he is reſtored:) And he that is in Poſſeſſion *King de facto*; that during the time of his Poſſeſſion a temporary Allegiance ſhall be paid by the People to *him*, and not to the King *de jure*: I think common Senſe will ſay, that there is no inconſiſtency in this, unleſs the words *King de jure* are ſo very Sacred, that they can't lower their Signification, to a poſitive Law, but muſt eternally carry with them one and the ſame extent of Power and Exerciſe of Authority.

That the Law of Nature obliges a Man to make Restitution for Injuries done, I agree, but that must be out of what is his own, without Injury to another; else, having robbed one, and having nothing of my own wherewith to make him Reparation; I might rob another to do it: So in the present Case, If I have been accessary to the unjust dispossessing the rightful Prince, nature obliges me to make him what recompence I justly may: But if it fall out, that nature does not at all intermeddle with determining what particucular Persons have a Right to the Government, *Or make one Man King, the rest his Subjects*, but that the Relation between the Persons governing, and to be governed, and the measures of Protection and Obedience thence flowing, are of positive Institution, and the Effect of the particular Laws of the Land: And if the Laws of the Land have so fixt the Duty of my Allegiance to the King in Possession, that, acting in the condition of a private Subject, I can't withdraw it from him, without a breach of those Laws, without taking from him what the Law has given him a Right unto: The Law of Nature can't oblige me to that; nor has the dispossessed Prince any Right by the Law of Nature to claim or exact that satisfaction from me; so that the Statute 11 *H.* 7. does not at all thwart or contradict the Law of Nature, or any Duty indispensibly incumbent on the Subject by it.

Case f. 40.

This Consideration will indeed aggravate the Injustice of my contributing towards such an Usurpation, and make People that have any sense of Religion, very cautious how they venture upon doing a thing of that kind; where the very Act of doing the thing, puts it out of their Power to wipe out any part of their former Sin, by an endeavour to make Reparation, without their contracting a new Guilt.

Our

Our Author compares the caſe of Obedience due to the King, with the Caſe of the Subject, as to the Protection which the King is obliged to give him: Theſe, I agree, are very fitly conſidered together, as mutually explaining and proving one the other. Let us ſee whether the reaſon of that Caſe will not fully come up to the proof of what I am endeavouring to make out. Caſe *f.* 23.

The King is obliged to maintain his Subjects in their Rights and Properties not only while they are in poſſeſſion, but alſo, when another has diſſeized them by fraud or violence: True, he is to do the latter (which carries a reſemblance to the caſe in queſtion) as well as the former: But it muſt be, according to the meaſures, and purſuing the methods the Law preſcribes. Where a ſubject is diſſeized, Law is to precede force: There muſt be a deciſion by a proper Judge in his favour, before there be a reſtoring him to his poſſeſſion: Till that be done, he is to quiet and defend the Poſſeſſour in the Poſſeſſion, tho' gotten by fraud and injuſtice: The King himſelf, to whoſe Wiſdom and Authority the Conſtitution has entruſted ſo much, cannot by virtue of all that Power doe the greateſt or leaſt of his Subjects that Right, which, he in his private Capacity undoubtedly knows belongs, and that the Law ought to adjudge to him; and ſhall we then ſay, that, in the Kings caſe, a private Man, to whom the Law has given no manner of Authority to judge of any ones Title, ſhall take upon him, by force, to attempt the unſetling a King, who is quietly Poſſeſſed of the Government, becauſe *he thinks* another man has a better right? Is it not more agreeable to the Compariſon our Author has made, and to the Reaſon of Mankind, That where there is a National Submiſſion, in a Parliamentary way, to the Poſſeſſour of the Throne, Every pretender

tender to impeach that Settlement, ought to wait for a Declaration of his Right by the States of the Kingdom, till which is done, Particular Subjects, ought, with regard to common Safety and Peace, to acquieſce under the Power from which they receive Protection, and to which, by their Repreſentatives, they have *Submitted.*

I own there may fall out very hard caſes ſometimes, upon theſe grounds, and ſuch Objections as will not receive an eaſie Anſwer: But I am ſure it will be very eaſie to maintain, That the miſchiefs will be *leſs* in themſelves, and likely to fall out *ſeldomer*, than by allowing every Subject a Liberty to embroil the State, upon a pretence that the Government is not in the hands it ought to be.

In matters of this kind in a *mixt* Monarchy, there will be ſome difficulties in the *Theory*, that are unanſwerable. The notion of a mixt monarchy it ſelf, will not bear a ſtrict diſquiſition: For, granting that of neceſſity there muſt in all Governments be ſome laſt reſort for the final determination of all differences (which will ſeem a very reaſonable propoſition) any Man may immediately run it up to a *Tyranny* or *Popular Government.*

If the laſt reſort and final determination of Right or Wrong between the King and People, ſhould be agreed to be in the King; notwithſtanding all the Laws now enacted, he may when he pleaſes (in *Theory*) make his Will the ſole Law: For whenever he is minded to attempt it, after the matter's running through other hands, it comes at laſt to him to give the Rule, which is the gaining of his point. So on the other ſide, if the People are the ultimate Reſort, and ſole Judges of the Rights of their Prince, of neceſſity their determinations muſt be obeyed, tho' they determine againſt his

his true Right. And that will in conſequence prove the Government no Monarchy, tho' he be in Poſſeſſion, and carry the name of King, there being a Power ſuperiour to him, and to which he is accountable for his Actions. If both Prince and People are to join in it, and they differ in their Sentiments, there is no determination, and conſequently uncertainty and confuſion.

This is the natural conſequence of driving up theſe notions to their heighth: But this is not therefore every day the caſe: There is a good old ſaying, that will interpoſe to ſave us: *Ipſæ res nolunt malè adminiſtrari.* This will, notwithſtanding all thoſe fine notions, keep both the Parties from attempting *ſucceſsfully* any thing extravagant, and utterly inconſiſtent with that mixture of Power, by which we are ruled, ſo much to our eaſe and advantage, tho' that mixture of Power can't be maintained in ſtrict reaſoning. I ſay all this to this purpoſe: I find it is ſtrongly objected to what I have advanced (*viz.* That a private Subject after a ſolemn ſubmiſſion of the Kingdom to an Uſurper in Title, ought not to attempt the reſtoring the *King de jure*, till there be ſome ſolemn deciſion in his favour, the Power of which I have placed in the States of the Kingdom) That this way of applying to the Parliament for Juſtice, and making their Claim there, may be prevented by the Uſurper's not admitting the States of the Kingdom to meet, or receive ſuch Claim, *&c.*

If I ſhould grant that they have no Power of meeting to that purpoſe, without the conſent of the Uſurper (which I do not;) and ſo, that this is a defect in our Laws, and one of the caſes againſt which a certain Remedy is unavoidably wanting in a mixt Monarchy; yet I may venture to ſay, That if the right of the diſ-

poſſeſſed

possessed Prince be apparent, all the Attempts of the Usurper to suppress it, will at long run prove unsuccessful. We see the Parliament of *H.* 6. and Convention of 1660. did find Opportunities of doing right to the injured Prince; and without them the People, whether they *ought* or no, is one case; but I think I may venture to say they *will* not long bear it.

If Usurpations do put us under these great Difficulties, the natural Influence that the Consideration of that will have, is, that the Nation will submit unto and suffer but very few of them; and 'tis a very unlikely thing, that the Rightful Prince should be turned out without great Misadministrations. But after all, I think no one need be ashamed of owning it to be his Opinion, That if it should unhappily fall out to be the Case, that one of that Family to whom the Crown was at first limited, should be injuriously dispossessed of that Crown; and the restoring him to it, could be compassed by no means, but such as would lay a Foundation for daily Disturbances and Civil Wars in future Reigns, that that Person's Right which was given him by the Laws, ought not to be set in Competition with the Laws themselves, and the Peace and Quiet of the whole Body of the People.

The Consequences which our Author draws from his Supposition, that *Cromwell* had been made King (which I confess would have been very mischievous and intolerable) move me not at all. In the first place; notwithstanding what he affirms, *That it was almost come to a Conclusion that he should take that Title upon him.* I can't grant that there was any likelihood of his being a King in Possession, entitled to the Protection and benefit of this Law. Perhaps he might have made an Interest in some of the Army (though most

moſt People believe the fear of their falling off from him, kept him from it) to have proclaimed him; and in the Houſe of Commons, or Parliament as they called themſelves, to have ſubmitted to him. But I have before ſaid, a bare proclaiming one *King* won't do the buſineſs, for then we may have as many Kings *de facto* as there are Rabbles of People in the Nation: But to make one who had no viſible Right before, ſuch a King *de facto* as may claim a Temporary Allegiance from the People, he muſt have not only the Power of the Nation in his Hands, and the Adminiſtration of Juſtice in his Name; but (what *Cromwell*, as he had been forced to manage matters for the getting himſelf into that monſtrous lawleſs Power he enjoyed, could never have obtained,) the Submiſſion of the *remaining parts of the Conſtitution*, the Lords and Commons, to him as their King and Governour. Till that is done, I know no Obligation any private man is under of paying Allegiance to ſuch a King, never having by himſelf or his Repreſentatives, ſubmitted to him. As on the other ſide, when that is done, and I receive the benefit of Protection from him, till his Poſſeſſion which protects me is loſt; or the Submiſſion which was made for me revoked and undone by an equal Power: I know nothing that can juſtifie my thinking my ſelf wiſer and more knowing than my own and the whole Peoples Repreſentatives; and from ſuch an overweening Opinion of my ſelf, endeavouring the Diſturbance or Subverſion of a Government well and fully ſetled.

But why in the ſecond place ſhould ſuch Suppoſitions of what *may* be, be uſed as Arguments: May we not from the Obſervation, That no inſtance like that did ever yet happen to ſet Conſcience ſo upon the Rack,

reasonably attribute some share in the Guidance of those Affairs to the Providence of a good God, who hitherto has; and, as we have reason from that Experience to hope, (unless by our Unthankfulness we draw the contrary on our selves) will still continue to deliver us from such Difficulties and Snares.

If all those Advantages which our Author reckons up, would have follow'd his obtaining the Crown, and if it was in his Power to have taken it when he had pleas'd, Does not the neglecting those Advantages seem to proceed from an *Infatuation*, as if Providence had determined against him? And ought not that rather to strike an Awe and Reverence on the Minds of all People towards their present Majesties Persons and Government; every step of whose Undertaking and Progress till their Advancement to the Throne, seems to be a Series of Providences; and the Effects of whose Government are such, as a Man need not stand in fear of being taxed with Impiety, if he attribute the Cause of them immediately to God's own Hand.

Before our Author comes to Answer Objections, (which I'll not meddle with, but leave them to shift for themselves) he produces Two Arguments to prove his Assertion, and it would be unjust not to take notice of them. The first I have granted already, and it makes nothing against me. The second I will but just mention, and leave the Reader to make his own Observations upon it. 'Tis the difficulty of knowing who is a *King in Possession*: It were a great hardship to put the determining that upon the Judgment of ordinary Subjects, Persons of mean Understanding; and therefore for *that* Reason their Allegiance shall not be due there; but 'tis nothing to require

Case, *f.* 48.

Case *f.* 53.

quire it of the ſame Perſons, that they be perfect Maſters of our Fundamental Conſtitution, and the Pedigree of the Royal Family, that they know *Who it is in whom the Crown is veſted, deemed, and judged by the Law*: Theſe are things more obvious to them than what they ſee and feel every day. Caſe, f. 56

This, Sir, I think ſufficient to be ſaid to what is urged from the Laws of the Land in the *Caſe* or *Defence*, as far as they concern the Poſition I undertook to maintain. Perhaps the Reader may think I have copied the Author's Pattern, in offering things which ſeem to prove more than the Queſtion, according to the ſtrictneſs with which I have ſtated it, required: I am not ſenſible that I have omitted the taking notice of any one Argument that is materially offered from the Laws, in conttradiction to my point; I am ſure if I have, it was paſt over for want of taking notice of, not by deſign, as what I thought could not receive an Anſwer.

But, Sir, when I have ſaid this, I muſt beſpeak all the favourable Allowances your good Nature can give, to what I have written, *to* the ill handling a good Cauſe, that would have born a much better Defence in the ſubſtantial Parts of it; and more, *to* the Faults that I have been guilty of in the manner of it: An ordinary Reader would hardly pardon the latter, becauſe he will think a little care might have avoided them; and I am ſenſible how guilty I am of the worſt of that kind, abundance of Repetitions; which muſt be tedious and uneaſie. All the excuſe that I can offer for my ſelf is, that the manner of writing in the way of Reflexion, (which obliges me often to take notice of the ſame Arguments uſed to different purpoſes) and not as an entire Diſcourſe, has made

that

that unavoidable. And, Sir, *you* know I have not had time enough allowed me to make it short: Whose Fault that is *You* can best tell: And therefore, whatever others do, you in Justice must excuse,

SIR,

Your Humble Servant.

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LICENS'D,

October 10. 1691.

J. Fraser.

ERRATA

Page 11. Line 16. *for Nation* read *Notion.* p. 30. l. 1. read *so that.* p. 30. l. 14. for *trying* r. *seying.* p. 31 l. 23. *for Majesties,* r *Matters.*